PER ASPERA
AD ASTRA
Wm S. Johnson LL.D.

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Johnson Collection.
v. 5

Highways.

By the Eng. Constitution (as you may call it) it never was disputed but that a mans land was liable to be taken by the public to make highways. There are three cases of this kind where the Legislr will take a mans land for the public use: Of these three this of Roads is one, the second is for the security of a country in time of War or by building Forts & the like, the third is the case of Bridges wh is much like this of Roads.

But it does not appear, that the Legislature ever had a right to take this land without giving a compensation to d owner but this was not on the ground of any contract.

Persons were appointed by the proper authority, for the purpose of designating the place where d road sho run, and also assess the damages, done to yd individuals, by the laying out of the road thro their land, & when the road was laid out, these people had a right to these damages.

This doctrine as to power of laying out roads has been adopted by us - but the manner of doing it, is diff- it is regulated by the laws of each particular State.

Whether a road is laid out by the Pub. or by the gift & grant of an individual, the right of the pub. to it, is the same, so also are the rights of d. adjoining proprietors. — for they have some rights wh are diff. in addition to those enjoyed by others, 1 Mod 231. 2 Mod 243. 2 Ray 3984. Co. Lit 56.

Highways. The county is divided into certain sections or districts such as towns villages, parishes, hamlets &c whose duty it is to provide & repair highways

And whenever any person thinks it necessary a new highway shd be made, he may apply to the proper Ct wh. is usually called the Ct of quarter sessions — and this application may be made either by a person or a town.

On the application being made it is the duty of ye Ct to enquire whether it would be of public utility for such a road to be made. In some of the States this enquiry is made by a Committee appointed for the purpose, in others by a Jury of 12. reputable men, & if they report favourably, A order is granted to lay out the road, for which purpose a Com^ee or Jury is appointed, & they also asses the damages.

From this Decision there is usually an appeal, & it may be made by any man whenever he thinks himself injured in point of Damages or ye like

It often happens that the old road becomes useless by the making of the new one; now here the Ct has power to shut up & sell the old one; & the avails become a fund for the making of roads — The Expence of the new Road falls on the district —

In many of the States, they have an Officer whose duty it is to exercise & repair roads & he has many sub officers. He is call a Surveyor & his accounts are settled & pd by the District.

When a road is once laid out every body has a right of passage, tho' he who owned the land, before it was a road

Highways } road, or is an adjoining proprietor, or any other person has no right to obstruct this passage. if he does it is a nuisance - & he becomes liable to an Indictment. And if any one is injured by such obstruction, that person has a right of acn. him, but to support that acn he must have been specialy injured.

But it may be a private nuisance & not a public one, as unloading wood, stone &c before a mans door, here the injured may bring an acn of tres. vi et armis,

What renders it an indictable offence is that it impedes the easement.

The right of the Road is ye same as that of the River, or wh. every man has a right to pass up & down 1 Hand 212.

The Mode of acquiring highways, or diffs. sometimes they are made by the pub. & sometimes by individuals - as it often the case in our Western country for the proprietors of land to give the highway & it is done or has been done by selling land to different persons & having a space between them & this for a highway, & such a sale as this is considered as a grant, & the proprietors waive their right to yd land by this act.

But the common mode of laying them out is an application made & the damages to apprd by authority of the C. C. or Legislature.

It has been contended, by some, & this too from what is found in the books, that the proprietors on each side of the highway own it in fee, each to ye center, subject to the easement

That they have rights diff from those of other people is beyond dispute, but that they own the land as they own other land

Highways } lands is not true, for if the Pt shd shut up the road they wd have no title to it whatever

And when the propriⁿ grant a road they have no prop. whatever in it after it is disused, but it belongs to the Public

The contrary idea originated from the supposition, that when the ~~land~~ road was laid out, damages alone were paid, & that they were not paid for the land but they granted it; wd & as soon as the easement ceased they own the land again. — Now this cant be true, for suppose a road laid out wholly on A's land, spreading up to the easternmost boundary of B, but it does not encroach a foot on B's land; In this case B. has as much right to a road as A. but none of his land is occupied by the road. Whereas if the idea above was correct, A would own all the land, ~~i.e.~~ wd be ~~possessed~~ of all the ~~privileges~~ of the road & B wd have none of them it, on its being shut up

Now the truth is, ye land belongs to ye Pub. 'tis a fund for the purpose of making highways, And the only rights wh. the adjⁿ propⁿ have exist only while the highway exists, & these are rights to the trees, mines &c wh are on or in the highway, & these rights they have merely on the idea ye they are adjⁿ propriⁿ & not ye they have a prop. there; If this prin. was not true A. on whose land the road lay wd have the right to there they quite to B's fence, but he has no right farther than to ye center of ye road, & B. has as much of ye privilege as A. & neither of them have any rights to it after it is shut up. or its ceasing to be a road.

Adgⁿ If the person on whose land the road was received only damages, & not the price of his land, as soon as the road was shut up the land wd revert-

Highways } but this is not so, for the Legislature has provided, that the land shall be sold to the adjoining propr. if they will buy it, if not to any body else who will buy it for its value

The reason of these rules is, that the people may enjoy their farms in peace; for if the adj. propr. had not these privileges exclusively to themselves, other people wd be filling up the road, cutting the trees &c. to ye great injury of these propr. — So the Land gives them every thing if they wont distroy the easement.

The adj. propr. has one advant. over every body else after the road is shut up. viz., to sue out a Writ of ad quod damnum; wh secures the sale of the land to him exclusively — but he expects to pay for it, to its full value; he sues out this Writ, lest B might have offer of ye Land with him (A).

But it is said by the opposit. what do the Books mean when they say the adj. propr. owns the Freehold? I answer — they have a freehold; but what is a freehold? it is either an est. in fee simple, in fee tail, or for life, & by this last is meant any est. wh will last during life, or may last during life or those est. wh have no certain end; as a Widow has an est. for life in her dower — but she may void it by a second marriage — And any estate for life is an est in freehold. Such is the est in ye adj. propr. in this case of the road — so long as it continues a road.

Now if B shd sell his land to C. only up to his fence — or "bounded by the highway" C wd own to the middle of the highway by this purchase, but when shut up as no use it belongs to ye Pub. alone

Highways } Doubtless there was originally
no right in the adj. prop. but to enjoy the freehold in peace
And as it now is the estate is truely a singular one
but the title is good. And if a stranger come & plough this
road he wd be liable to an act. of tres. in et amis, for the
road is the freehold of the adj. Prop. 1 Roll 391 to 392.

Pa Sh Ct

Geo 3. the Law on this subject is all collected, & all I have to
i, to be found there, it brings together all the Law on the
subject wh had been from the begin. of time to the day see
the St in 3 Ba 59. — And is remarkable that in the sec. of
the St wh treats of laying out the road, it preserves to the
adj. prop. the right to the Mines, trees &c, as if from fear
that this antient C.L. right might be thot to be taken
away by the St if not mentioned; and except this right
no other is by the St granted. And this decides the quest.
For no Legislr under heaven can sell a mans land
without his Will. Whenever then we find a Legislature
disposing of Land without paying for it, we conclude
they consider it as their own. & this is the case of
their selling the old highway. Case. When they run
a new the streets of Hartford & laid out many new
ones, many of the old streets & alleys were ordered to be
sold, wh never could have been done had they belonged
to the adj. prop.

The Law then is conclusive, that there is no ownership
of the road except in the pub. after it is shut up. & before
this nothing can be done, but by the adj. prop. to im-
pede the road, & even they cant impede the ~~right~~
of passage

The Quest. once arose in this State, A man set
up

Highways. } who a house on the highway, the Ct held that no one but the adj. prop.rs could do this. But in the case the road had been laid out many years before by an ancestor of Deft. and he that the road belong to him but the Ct held contra. — this was an act this, vi et armis.

I observed that a River was a highway, now if the river changes its channel, the new channel becomes the highway. 1 Roll 390

Encroachment

in case of a nuisance being erected in a highway is peculiar, the Ct not only fine him who erected it but issue an order commanding him to remove it, & if he does not do it, it is a contempt of Ct & Rol 394. 1 Bac Abd.

Narrowing Highways

Here as before the adj. prop.rs own to the middle; the public wishes to benefit itself by narrowing this highway which is too wide — The adj. prop.rs will doubtless have the offer of the ~~sale~~

But suppose the adj. prop.r not able to purchase. & the road existed long before he bot the land he occupies, & probably gave more for it on acct of d road prop.g it w.d he otherwise have given, Another buys the road, how shall this first person get to & from his land? the road is sold, so if he passes what was the road he is a trespasser. It is difficult to reconcile these conflicting rights, for it is true the man shd have a passage to & from his land, & the public shd have the benefit of d sale of d road, How shall we do justice to both these parties? I can see but one way. It is for the Land to give to this man a right of passage; & I think

Highways Bar. } the Ct and grant this shd the case arise, — The public shd sell the road with this easemt upon it, — but when this is not done, I think the right of passage shd be granted by law.

That the land is bot out & out by the public when they lay out a road has I believe always been the case, for the land is appraised, damages assessd &c for the new distr, which must be dug & fences wh must be made. And I have known it the case, that when the land was to be benefited by the new road, for these benefits to be set off against damages.

The C.L. has provided that if damages arise from a bridge or a road being out of repair, that the District within which it is shall pay that damage, and

We have a St in Conn. that if notice of the bad state of the Bridge or Road is given in writing to the Officer whose duty it is to oversee these things, & afterwards damage arise, the district shall pay double damages

We have a old & singular St on this subject (as we have on several others) "that if a man shd be killed, from the bad state of the Bridge or Road, the District shall pay the relatives of the deceased £100,

If a Company is formed, & by the Legislature incorporated to make or to repair any road, that comp. shall be accountable for all damage arising from the badness of the road,

Sometimes ~~them~~ comp.s have the bridges excepted from their care. in such cases the district is obliged to keep them in repair; this is when the turnpike (bar of them we are speaking) follows an old road over a River, but if it leaves the old road to cross the river at another place, the comp.s must build & keep the bridge in repair. — It has been decided that the bridges which cross little rivulets are a part of the highway, & as such must be kept in repair by ye company.

He who owns the land on the bank of a River owns to the middle of the River, & if the river recedes or changes its channel he still owns to the same line, in this the ownership of a River differs from that of the highway

If a road runs on the bank of the river, the adj.g prop.r owns the whole of it even to ye middle of ye River.

Statute of Limitations

There has been a diversity of opinions upon this interesting subject — In this country the disputed question has been settled by the National Sts & I think correctly.

They Sts are diff in the diff States, but there are certain principles applicable to all.

By the St James II called the St of Lim. it is enacted, "that no simple contract shall be binding in Law after six years standing." These words have been adopted in most of the Sts of the diff states, but notwithstanding these words, there are still simple contracts which are binding after that period, & from their peculiar circumstances are held to be out of the St. — such as Imprisonment, Infancy, absence &c

The object of this lecture is to shew what takes it out of the St & what does not — and to get at the principle which governs in these cases.

There are diff opinions as to the prin. which governs, & these opinions will sometimes produce the same results & in some cases will produce very diff results.

The first & most popular opinion is that the length of time bars a recovery on the presumption that the debt has been paid, & this is the effect at C.L. & is so now as to a bond which has run 20 years. In these cases the Plea is "full pay^t" & the length of time wh has elapsed is given in evidence. This St reduced this presumption to a certainty, & it did nothing more than point out what should be the length of time to operate as a bar.

St. of Lim.ns } Cases. A Bond was 20 years old prima facie the length of time was enough to bar a recovery; but the Plff could shew that he was a bankrupt & entitled very lately it wd have been idle to have sued him for there could be no hopes of obtaining any thing, — this takes it out of the St.

On the other hand Deft was always a man of property & it appeared Plff was always in want of money, & often borrowed it, Deft. — here the presumption is strong that the debt was paid — & so it is within the St.

Agn the Plff had been out of the way — as in a foreign country — this absence takes the case out of the St.

A man has an oblign 6 years old, the St of Lim renders it void after the lapse of 6. But Plff says — one year ago Deft promised to pay — this removes the presumption of payt — for it acknowledges the debt — & so takes it out of the St.

It is to be observed that this St is made for the sake of sound policy & not for particular justice, & it is to compell people to settle their accounts within a reasonable time, & if they wont do this, it deprives them of their legal rights

A St has been made in this country, the substance of wh is "that all actns founded in simple contn shall be brought within 6 years after the cause of actn has arisen and not afterwards"

There are various Cases which it is agreed on all sides are not within the St of Lim, some of these we will examine & apply them to the Prin. & endeavour to ascertain what is the true governing Principle

1st. If after the lapse of 6 years, the debtor promises

Lt of Lim. Cases } to pay, it will take it out of d Lt

2d When you do sue the act is not bot on the new promise but on the original one, i.e. the new promise is not set up as the consid^n but the orig^l is,

3d If the prom. is conditional as, "I will pay if you will prove that I owe you" this takes it out of the Lt if he proves the debt as much as if Deft had said absolutely "I will pay you"

4th A partial pay^t of the debt after the 6 years have expired, takes it out of the Lt.

5th There is one case wh has been much litigated, I will give it as last reported, tho' I dont think it correctly decided. If there is a joint-note & one of partners after the lapse of 6 years pay it, it partly takes it out of Lt as to both.

5th A bare acknowlid^gment of the debt after the lapse of the 6 years, (without any thing more) takes it out of the Statute of Limitations.

7th When the Deltor acknowlid^ged he owed £20, but said "I will not pay you £20, for the Lt of Lim. has run but I will pay you £10." the £10 was recovered, but no more

8th Testr directs in his Will "that all his just debts shall be paid" those debts barred by the Lt of Lim must be paid as much as any other. 1 Burrey 209. 2 Henry & Mun 124. These are American decisions, see Fel N.P. 162. with American Notes. Pr Ch 386.

9th If an insolvent Deltor who has been released by Law shd afterwards advertise that he will pay his debts, he is bound to pay those barred by d Lt of Lim as well as any other Pr Ch 385

10th If a creditor whose debt is barred by the Lt petitions for a commission of Bankruptcy & the Deltor does not object to it, the comiss^n is good, & yet it does not prevent his petitioning

St of Lim. Excep. } if the Debtor does not object — and it does not lie in the mouths of third persons to object, if the debtor does not. — (He who petitions must be a Creditor). 5 Bur 2638.

Opinions as to the Governing Principle.

1st The first has been noticed, viz. That any thing which will remove the presumption that the debt is paid takes it out of the Statute.

2d That nothing need be proved but Indebtedness & when this is proved recovery may be had — this opinion is much like the former but it differs in one or two respects —

3d This St is one which no body is obliged to conform to, & if he will not avail himself of it, he waives it, & its benefits, & must pay his debt.

The first of these hypotheses is not reconcilable with the authorities. One of the cases is the case of Wills, how low in this case, does the devise take the debt out of the St on this hypothesis; there surely is nothing which proves the debt was not paid, & this removes the presumption, the devise is gen. "all my just debts". But if a particular Bond was mentioned the case wd be altered, the devise then wd be ample proof that the debt was not paid — But Ch in these cases, unusually orders the debts loved by the St to be paid, which could not be, if the Law presumed the debt paid, for then there would be a manifest absurdity to compell the pay of it, as is done by Chancery's compelling the pay of these debts — The Prin: then is incorrect. —

On the same principle is it, that if the Insolvent adventures to pay his debts, he shall pay those loved by 3d St. Now here agn if the Law presumed the debts paid, the Cred. could not recover — The Law does not presume the debt paid, but does that it is not is lent.

St of Lim.ns } Neither is the second Hypothesis correct viz. that the proof of Indebtedness takes it out of the St. for if this was the case, When P delta acknowledged he owed the £20 but did pay but £10 as the St of Lim had run, he did have been able to recover the £20. but P C J held he did recover but £10. There is a case 5 Mod 426 which goes to prove the same thing A was indebted to B for £9 he acknowledged P debt - but said to B "you took the advantage of me in P bargain & so I will pay you but £5 as the St of Lim has run" B. brot P suit for P 9£ but failed, the C.B.R.P. if pl. act. had been for the £5 he could have recovered Gill L E 26, 47.

If this hypothesis was correct no action could be maintained on the original contract, it must be brot on the new, or the promise case. a suit was brot on a debt wh was barred by the St. and after the act. was commenced, Deft promised to pay — this was given in evidence, & it took the case out of the St. — Here the act. was certainly brot on the old contract & not on the new promise for this promise did not exist at the commencement of the act.

By the Eng Books, quot. we are unable to ascertain whether the act. was brot on the orig. or new cont for they are all act. of indeb. assumpt. — but in the case above there is no doubt 2 Burr 1099. see Pr Ch 325. Cad C 41. Carth 471 this was the case where the man barely acknowledged it was due. Here the Ct held that there was a presumption to pay & of course there was a waiver 2 Vent 152. 1 Sal 29. 1 Vent 191. Cro. C 150, 381. Carth 387. L Ray 380. There stand that there was an Indebtedness. L Ray 420, 44, 744, 1001, 1101, 701. Doug 169 this was when the Debtor made pay.t after the St had run upon the Debt. Bac C 385, 1 Br 760. 6 Ib 189. 7 Ib 182. 2 Vent 152.

From this I apprehend that whenever Deft has

Lt of Lim } Waived the benefit of the Lt he shall be compelled to pay his debt — The Governing Principle then is the Waiver. and if we examine the precedents, both in Law & Equity, we will perceive this to be the principle. Thus the acknowledgement of the debt without the promise to pay (Carth 471) — the presumptn is, as he says nothing to the contrary, is that he as an honest man & intends to pay his debts — & this does take it out of the Lt. as its benefit is waived.

But when he acknowledged the debt, & sd the Lt had run & therefore he would not pay (Gilb L.C. 247. 5 Mod 426) he did not waive the benefit of the Lt. — And whenever we find Deft wont waive the benefit of the Stat. there can be no recovery

Thus too in the case (Gilb L.C 47) where Deft acknowledged that he owed £9. but as the Lt of Lim had run he wd pay but £5. Pltff might have recovered the £5, for the benefit of the Lt was waived as to so much, but he wd & did not recover the £9.

On this Principle too is the decree of Ch. (Pr Ch 385), that the debts on wh the Lt of Lim had run shd be paid under the Will ordering all his debts to be paid — for by the direction that "all his debts" shd be paid, he waives the Lt

And so with the insolvent. debtor who advertises, that he will pay his debts (Pr. Ch. 385) — he waives the Lt by the advertisement, tho' both Law & Equity suppose the debt barred by the Lt of Lim.

The case of the Cred^rs petitioning for a commission of Bankruptcy, after his debt was barred, goes to prove the same

St of Lim } the same thing. A. was in failing circumstances, & the Creditor whose debt was outlawed. petitions of a commission of Bankrupt might be issued. A. did not object - it was contended the commission was void, but the Ct held it to be valid, for the debtor by not opposing the commiss. waived all benefit of yd St.

A partial payt after yd St has run, takes yd debt out of the St on the same ground of waiver.

And if Deft does not plead the St in bar of yd act he waives it & can never afterwards avail himself of it. A man plead non apt & lost his suit. - he then motion'd for a New Trial, on the ground that he might have plead non opt infra sex annos, but the Ct did not grant it, saying that by not pleading the St he had waived it. - This Prin of Waiver is the governing Principle in those cases which are out of the St.

We have a St of Lim. as to Bonds which renders them outlawed in 17 years. A Question arose on this St, when a promise after the St had run had been made of payt. It was contended & so held by the Ct, that the promise to pay did not take it out of the St. But the decision was not considd by the Bar as being a very correct one. The suit was then lost on the subsequent promise before the National Court. Cardoll Justice, & the suit was sustained.

Afterwards a suit of a Bond arose. & the Ct were of opinion the subsequent promise took it out of the St & they ordered the Clerk to enter it on the record, that the decision was on the principle of Waiver.

There is a Question which has not yet been decided viz. Suppose there is,

St of Limit } Joint Contract wh has been barred by the St and one of the obligors makes part payt, does the contt revive agt both? If the case is taken out of the St he who never waived and became liable, — one cannot be liable without the other, therefore if it does revive, it must revive agt both. Unless it revives agt both it is bad because the contt is joint. In Doug 699, the Ct held that it revived agt both — The Judge does not perceive the reason of this decision, for there was no presumption that the one was authorised by the other, to make payt. This case in Doug is directly opposed to one in Vent. — There is an attempt in Esp 191 to reconcile these two decisions.
In case of Jt Debtors a payt by one and be a payt by both, but it does not follow from this that a promise by one is a waiver by both. The Judge thinks if the true ground in the case is, if the partial payt by one was a waiver of the St on his part which revives the oblig^n agt him, & if a suit and lie agt him founded on the new promise, stating the old contt as the consideration. It was on this ground if the before mentioned decision of Ferdell J. was given.

What is the Nature of the Plea of the St of Limitations? Is it a plea in Abatement or is it a plea in Bar? If it is a plea in Abat the consequences will be very diff from those which would arise if it is a plea in Bar. By the constitution of the U.S. a judgt rendered in one State is a bar to an action in another. Now suppose a man in Conn. owes a Bond to a man in N.Y. then this difficulty will arise. — In Conn a Bond is barred if 17 years have run upon it, in N.Y. they have no St of Lim to a bond, now if this oblig^n

St of Limit^ns } is used in Comm. the Ly loci must prevail, & of course if he pleads the St of Lim in Bar, judgt must be rendered in his favor, & then if he bd agn goes to Nfy he cd not be sued, by virtue of that article of our constitution which is above alluded to — wh wd be manifestly unjust — If it be looked upon as a plea in abatement, the consequences wd be very diffnt, and the judgt wd only amount to this "that the Pltff cd not maintain his actn in this State". I think therefore that where the plea is "non assumpsit infra sex annos" that it is a plea in abatement and not a plea in Bar. Wilson J was of the same opinion in the case of the lord before mentioned. If it is considered as a plea in abatement the actn cd afterward be brt in Nfy if the Creditor cd find the Delta there — This question cd never arise in Eng, from their local situation

For the cases mentioned above see 2 Burrow 1099. from. ofte & actn commenced; Gilb L C old. ed 47. Ly case. Pr. Ch. 386. case of the Will. Pr Ch 385. case of a Insolvent wo adventured. Sal 29. Bro C 141. 4 160. Carth 471. Sal 425. 4 Mod 105. 5 Mod 426. 2 Wils 130 something 1 Vent 194. Doug 629.

Insurance.

by Judge Reeve, Augt 25th 1815.

General observations on the Law Merch^t.

The Law Merca-
tória is a law common to all commercial nations
regulating all commercial concerns, Wis. to those nat-
ions over which it is prevalent what the common
law is to those nations over which it is prevalent.

The L.M. is varied in diff^t countries by their par-
ticular customs, which have the same effect
as particular customs under the C. L. & the
them are to be their approved; The L.M. is
itself sometimes, though improperly called a
custom, "The custom of Merchants", This is
because it differs in some of its principles from
the C.L. but in reality it is but a branch of
the C.L. - the judges are bound to take notice of
it ex officio, as of the C.L. in which it differs
from a custom, — It is also held to be altered
by legislative acts: It is confined no particular
district, nor to any particular class of men.

The L.M. differs from the C.L.

1st In regard to the
jus accrescendi. By the C.L. if there be joint ten-
ants of either real or personal property, if one of
the dies the jus accres^d prevails & survivor takes
whole property to the exclusion. But by the L.M.

Life" of [illegible] the death of one p. ins" or co-partner does not transfer the prop. to the survivor, but to the heirs of the deceased.

In the U.S. the jus accres. has generally been abolished either directly or indirectly. In N. York, state words not under the R.L. create a joint tenancy, under the Ld law of that state create a tenancy in common.

2d. Fraud in the consideration of a contract, does not vitiate the contract at E.L. damages only are given; unless application is made to Ch. in wh case the contract may be rescinded. But by the L.M. the least fault, the least concealment of any thing wh a fair & upright conduct would not approve, will vitiate the contract. The concealment of the fact by the insured, from the insurer, that the morning the vessel went out, an enemy's privateer was near off the harbour, the policy being obtained by this concealment it will be void; & no recovery can be had upon it, in case of a loss no matter in what manner the loss may have been occasioned.

But the Ins. is obliged to tell every material fact wh he is acquainted, at the time of the application for the policy, still he is not obliged to tell his calculations, as that he may think that there will a war break out in so many days. indeed this would be impertinent.

In these cases of void policies the premium must be returned for justice alone is here consulted.

3d. By the E.L. no man can be made liable, by the

the more courtesy or favour of another, by the L.M. he can. This A of A. finds B's horse, in a situation in which he will be lost — in fact A sets himself very much as does sent himself. — He cannot recover of B. for his service by the C.L. But by the L.M. if A draws a bill of exch. in favour of B on C. & on C refusal to accept & accepts it on the honor of the drawer, & on notice of the acceptance by C. will become liable to him, as he ~~upon~~ would be to the acceptor. — And so agt. in case of a wreck. those who assist the distressed are entitled to salvage.

4th If by the C.L. A having a judgt. & exec. agt. B & C. — should imprison B. alone, & then find him unable to pay should release him, the release would operate as a release of both — this is without reason. — But by the L.M. a Crdr. may imprison & release one jt debtor & then another successively until he gets his debt be there ever so many, & this rule seems to be founded on high reason

5th The calculation of time by the C.L is by Lunar months, but by the L.M. it is by the calendar months.

6th When the time for fulfilling a contract falls on Sunday tenter on the following Monday is good by the C.L. But by the L.M. it must be made on the Saturday preceding

7th At C.L. no chose in actn. was transferable, no right at all passed by the assignment, & it was considered as an offence. But as commerce advanced they began to

Diff. of the C.L. & L.M. } to protect these assignees, but now the assignee must bring the act. in the name of the assignor so that a release by the assignor will be an effectual bar. but in this case Equity will compel the ass. to indemnify the ass. or if he is unable so to do, it will compell the obligor so to do. But by the L.M. mercantile instruments as notes of hand, negotiable notes, bills of Exchange bills of lading &c may be so transferred as to entirely change the ownership if made payable to B or order. 2 BC 359. 444. Co Lit 232. 6b. 2 Roll 45. 1 Wils 45. 24. 1 Bos & P. 26. 14 BC 605.

8th When there is an existing debt & the creditor receives an order from the debtor upon a third person, by the C.L. an action arises in favour of the creditor upon the order upon his giving notice in a reasonable time & in a reasonable manner, but no particular method for giving this notice is prescribed, a notice by a letter has been held sufft. By the L.M. the notice must be by protesting the instrument, before a notary Public in writing & sending a copy &c to the dept. &c &c.
These are the principle differences between the C.L. & L.M. there are many other minor differences wh. will be noticed as they occur.

The subjects of the L.M. are, 1st The doctrine of Insurance, 2d Of Bottomry & Respondentia Bonds. 3d Of Bills of Exchange & Promissory Notes, 4th Of Charter Parties, 5th Law as to Ship-owners & Seamen. 6th Of Partnership. 7th Of Factorage.

Insurance.

This is a contract by one person to indemnify another agt certain perils to wh the latter is exposed, wh indemnify him agt a certain event.
You will here keep the contract of indemnity in view & that the Insured can never make money by the contract.

He who undertakes the risk is called Insurer. He who is protected is called the Insured – The sum paid by the Ins.d is called the Premium. & the writing in wh the contract is set forth is called the Policy of Insurance.

Formerly insurances were made on almost all events as births, marriages &c which in fact were bet mere wagers. There being no contract of indemnity, but these insurances as well as those upon ships in which the insured had no interest were deemed illegal Lis. & of course void, in fact they Lts declared all Ins.s void wh were not upon ships in wh the Ins.d had an interest, or else upon Lives, or agt fire.

Whether these Lts were in affirmance of the C.L or not, has been quite a question & indeed still is, this one of importance to us, as those Lts have not been adopted by us. It has been contended that these now illegal Ins.s were wagers & that the wagers were supported by the C.L but to this Mr Justice Buller observed that it was not for him to go back to form wh the

but insurances properly speaking are not wagers but contracts of indemnity & therefore are within the mischief of insurance. I take it that all contracts without a consideration are void. & as such have these policies been long treated in the U. States. & so will I believe be on best settled to be, tho' there is no a decision in Europe but holds such contracts as void, which is good proof of what the C. L. may is & that it was the transgressions of Eng.d wh. raised the necessity for these Ins. –

Marine Insurance

Who may be insured? All persons whether citizens or aliens may be insured, unless indeed they are alien enemies. –

The practice of insuring the enemies vessels has arisen in Eng.d & I believe it has never been decided whether these insurances were illegal or not. L.d Mansfield always avoided giving a decision upon the point, tho' it is not that he would have decided against them had the point been directly in force. There are many instances of such contracts being enforced & their legality has been asserted by some of the first characters of the nation. Laws have been frequently made wh. seemed to imply that they were lawful, as those acts passed in 1746. During the war between France & Eng.d wh. declared such contracts during the war should be null & void. The ground of objection to them is that they are dangerous & impolitic, as giving the French to get an

an interest in the prosperity of the enemy and offering an inducement to them to give such information as will secure the ships of the enemy from the perils of the country — it positively also contravene the rule that the duty of the King shall not trade with the enemy. — It is on the contrary observed that they are very beneficial as they bring great quantity of money into the country. see the Law of Nations 1 Ed. Marshall 84. 1 Beg 322. Park 342.

In 1808 84, there is a case wh. came before Ld Mansfield at Nisi Prius. It was an action by the Ins. to recover a premium. On the face of the policy it appeared the ship was neutral, & had permission to go to the enemies ports. — verdict for the Plff. On motion for a new trial the illegality was set up, & the rule refused. Ld Mn. Ch. Justice. — hence it was said that Ld Mn. refused the rule on ye ground that the transaction was lawful, & thereby gave a virtual ratification to it; but this is not the case, he refused on the ground that justice had been done in the previous trial & that deft should have availed himself of the illegality of the insurance, if such it was, in that trial.

In 5 Bos & P. The case was, the policy was entered into in time of peace & to go to Cuba being no Ld prohibiting it, but a war broke out before the ship sailed Ld Kenyon then held that no act. could be maintained by an alien enemy. —

2 Burr 1084. was an action upon a Ransom bill, & sustained, by Ld Mansfield & others.

In 6 T.R. 35. The case was similar to those above except that letters of reprisal had been granted before the policy was effected, held the action could not be maintained by an alien enemy. But none of these cases reach the point in question. —
But it seems to be the opinion that contracts made after the war has commenced are void, but if made during peace they are good; Ransom bills are enforced on the ground of alleviating the evils of war, as otherwise the ships when once taken w^d seldom get released.

It was held in 6 T.R. 418. in the case of an insurance by an American residing in France that an Ins^ce by a merchant residg in an enemy's country might be enforced. — This was when there was a Act existing prohibiting the insurance of enemy's property.

A collection of all the arguments which have been made use of pro & con on this subject by the European writers in gen^l is not as by those of Eng^d may be found in Park 287. 242.

Any person who has an interest legal or equitable, qualified or absolute may be insured. as where a merch^t in Petersburgh owing a merch^t in London, ships goods to the latter as a security for his debt — here the legal title rests in the man at London, as a pledge, & he may insure his prop^y. A. at Petersburgh sold his equitable interest to B. who had his interest insured & it was held to be good. Buck 289. 1 Atk. 133. 1 Term Rep. 445.

745. 749. March. & Eab 81.

It seems that when usage gives a title to prop.ty but not the law & therefore the title or interest is uncertain, the person claiming by that title may be insured as, in case of a capture by a national ship, now by usage the crew are entitled to a certain share of the prize, though in view of the law all belongs to the government — this interest may be ins.d March. 84.

Trustees, Executors, Guardians & other persons to whom property has been entrusted, may without any special power of Atty. get the prop.ty in their hands &c ins.d, — and indeed it will appear that it is their duty so to do when they think it ought to be done, & are liable if they do not insure & &c. 13. 14. 1 B & P. 815.

Le Costey gave boat. tho he has not the legal title still as he supposes the equitable title he may insure, but if he insures the trustee cannot. 1 Bar & Pet. 815.

Who may Insure?

By the L. Mr. any Company or Individual might insure & Comp.ies and be liable in their corporate capacities but by St 5 Geo 1st all comp.ies are prohibited to ins.d except the two, the Royal Exchange & the London Assurance Companies, but individuals are left as they were at L. Mr. & many, may subscribe to the same Policy, but not as a company.

In this country as we have no such St. any man or number of men may

What may be ins? } may insure either as individuals or as companies, & they are answerable to the amount for which they insure

What may be insured? An Insurance may be made upon Goods, Ships, Freight, Bottomry & respondentia Loans, &c

There are also articles which cannot be insured, as if such articles are ins^d. the Policy will be void, as goods to be smuggled, & all articles by Government forbidden to be insured, & the Policy in such cases is void, whether the insurer knew of the illegality of the ins^n or not, for to hold him bound wd be to afford some security for these illegal acts.— but this has been questioned.— Cow 343. March 49. 50.

On the question whether an insurance on goods in a foreign country agt the operation of the laws of that country, is binding here, opinions differ, Ld Mansfield says that no nations regard the revenue laws of another nation. The case was an ins^n in Eng^d of goods to be smuggled into Spain. See his arguments Lefar vs Fletcher Doug. see also Park 287. Cowp. 343.

An insurance on articles Contraband of War is illegal & of course void.— It is allowed on all hands that these articles viz. Arms, ammunition, horses, & indeed all military & naval stores are liable to capture, & in some cases Provisions are also held to be liable.— But there is nothing criminal in this commerce, the Merchant only runs the chance of losing his property. Grotius Book 3.

3d ch p. 15. Vattel Book 3. ch 7.

But this business is often regulated by treaty, which treaty operates as a law between the contracting powers, alone, it are.

Other articles may be carried with safety unless there be a Siege or a Blockade in which case the trade will be unlawful & will expose the property to capture.

Blockades are not always actual; tho doubtless they were originally so, & so were intended by the law. But it has become customary to declare ports & even a whole coast has been declared to be in a state of blockade; — but this I deem to be an infringment of the law, & the extent to which it has been carried shews it to be so. — I know of no way in which it can be remedied except by negotiation.

Not in cases of this kind public notice should be given to the world. & there can be no lawful capture unless such notice has been given

Even in case of an actual blockade, no vessel can be made a lawful capture unless she has attempted to enter the port.

The Right of Search follows as a consequence of the proposition that there may be articles contraband of war, for it wd be useless to declare goods contraband unless the right of searching for them was allowed. Ships with neutral carrying such articles have been condemned, but the general rule is to

What may be Cus? What not? & the rule is, that the property is forfeited, but if a subject is detained in such trade it is treason, if he issues such articles it is highly criminal. Vattel. Book 3. ch 7.

Insurances agt. Embargoes of foreign countries are good but are void when made agt. those of one's own country but one nation does not regard the laws of another nation in this respect. 1 Bos & Pul 234. Lang 254. Cow 754.

Commerce with an enemy is unlawful, of course then the insurance of an enemy is not binding.

A. purchased goods in the enemies country ~~after~~ before the decl.n of war. Quere, can he convert those goods into other being liabilities for the purpose of avoiding them & will the insurance upon such goods be good? see Bos & Pul 345 & 2 Ch. 548.

Quere. Suppose a ship is insured & before she sails an embargo is laid & detains her at home wh. loss the loss occasioned by the detention? Cowp 784.

Seamans Wages or any thing in the nature of wages cannot be insured, — this is on the ground of policy to compel the seamen to exert themselves in cases of danger, — for it is a rule that if the vessel is lost they lose their wages. the effect of this rule would be lost if they were permitted to insure their wages. But if they have freight on board that may be insured. 3 Bur 1912. 1 Bl. R. 594. Emerigon 236. 3 Bur 1905. 1112. 7 Ch 150.

Freight, is an insurable interest by the Gen.l Law, but not in France by the custom of France. This policy is attained by the owner of the ship; for the freight is that which the ship earns. It is held to be lost, as it is dependant upon the safety of the ship — if the ship is lost, the freight is also. But there can be no recovery had in this case if the loss has happened before the risk has begun to be run, & this risk has commenced if the cargo is on board or part of it is on board with the intention of loading the whole; or if the ship has sailed from one port for another to receive her cargo, in such cases the insurers wd be liable tho' the ship should be lost in harbour. Park 265.

It has been once held, that, the Profit which a man may make on a cargo, may be insured; but the decision has not given universal satisfaction. This however was a case in wh. the profits were ascertained in a valued policy, had the policy been an open one, there could have been no such decision, — as in there wd be too great an uncertainty Park 265. —

Bottomry Bonds are an insurable interest, but they must be insured as bottm. bonds & will not come under the gen.l title of goods. — These bonds were formerly much more in use than at present, they are bonds given for money lent to one going a voyage & are upon the security of the ship, if the ship returns the lender is to receive a very large interest, but if not he receives nothing. They are not usurious, in consequence of the great hazard

the

What money lent? the lender runs the usual interest is 40 per ct. 8 Peer 1894.

Respondentia Bonds differ from bottomry bonds, in this that the ship is not pledged for the repayment of the money lent. Peer 1894. Cowp. 583.

A Valued Policy is one in wh the value of the property insured is settled & the sum in the policy is to be the amount, to be paid in case of a total loss, as when the parties agree that the insurance of the ship cargo &c shall be for $10,000, i.e. they are valued at that sum, In such case the real value cannot be enquired into. But in case of a partial loss, the policy is turned into an open policy, & the real value & loss may be then enquired into, & the same rules prevail as in cases of open policies

It has been questioned whether these valued policies were lending, the objection was that they opened the door for wagering policies. The decisions are that they are lending but this does not preclude the enquiry whether there has not been a fraud practised upon the law, by making use of them as a cover to wagering. The only rule is, that if it appears that the insurance was only intended as a contract of indemnity, it will be good, but if for a wager it will be void, & this must be determined from the circumstances of the case, as if goods of small value were insured for $10,000, it wd be held to be void, 2 Peer 1071. –

An Open Policy is one in wh there is no valuation of the property insured agreed upon: But the same to –

to be paid depends upon subsequent events & an after valuation, And the rule here is that no reference is to be had to what the cargo might have been worth, had the voyage have been completed, but the prime cost & the duties paid to the public. 1 T.R. 304, 3 ib. 693.-

A Wagering Policy, is where there is no interest to be insured, they are made for the purpose of gain whereas an insurance is made for indemnity. These by the early decisions were held to be void, & in by are now ruled as by L.L. They were originally held to be void on the ground that insurances were made for indemnity & not gain, but on comparing them with wagers, they found to be so nearly allied to them, that the L. was introduced.
It has been contended in this country that as we have no L. these wagers policies are here valid; but I take it not to be so, They are void by the L. M. all over the world. Buller alowed that wagers were void at C.L. but this is not true as to many cases in the C.L. If we have not adopted this law to too great an extent when we were colonies; I think sufficient enough can be found with us to support the dictum of Buller, & under the wagering policies void by our C.L. 3 T.R. 693. 2 Vern 214. 261. 269. 416. 1 Show 156. 1 Wils 77. Com. Rep. 368. - 10 Mod 71. Cow 360.

Reinsurance, is an insurance obtained by the insurer to insure himself, As A. insures the ship of B. & then gets himself insured agt. the loss of

of his ship. This by the L.M. is lawful, but the English suffering that inconvenience arise from thence, made a St. declaring it illegal & void & all in two cases, viz. of insolvency & death of Insured. In wh. cases he or his Rep.ves may recover. — We have no case of the kind in our Courts. Amesby 62.

Double Insurance is, when the same property has been twice or often insured but at least twice. As if insures his ship Ve at the office of Jno.s at Hartford, & ag.st at Middletown & ag.st at New Haven. This however cannot be done for the purpose of speculat.n for the law will allow the ins.d but one satisfaction; that the Ins.d may see & recover upon which of the policies he pleases, or he may see upon them all, in case of a recovery ag.st one, the office recovered ag.st then take the place of the insured & may compell the other offices to contribute their proportion of the loss, although there is here no privity of contract between the diff.t offices, — This contribution is peculiar to the L.M. Beawes 242. 1 Pk. R 103. 416. 1 Burr. 486, 492.

If there were several underwriters to a valued policy each underwriting for different sums, the old rule was that in case of an over-subscription, the first were held liable, & the rest discharged, but those discharged were obliged to restore the premium — but this rule is now exploded & all are held liable to contribute a ratable proportion 1 Show 132. 152. 1 Bac 489.

Different persons may insure diff. interests in the same thing or in the same bottom, & each to its full value; as in the Stanhope case, A may insure his legal interest, & B his equitable interest in the ship & cargo. Ag.st one may insure for goods, another for freight & a third for bottomry. - & each may recover for his loss. 1 Bur. 493. 495. 1 Bl. R 103

A Ag.st 1739. is the passage of a ship from one port to another an insurance on an unlawful voyage is void; & so is an insurance on an unlawful commerce. Shall there be a diff. between an unlawful voyage & an unlawful commerce? The voyage may be lawful, the commerce, is unlawful, as the ship may go to Eng.d but not import foreign manufactures, & vice versa
The voyage is unlawful when the laws of the country forbid navigation to that port.
An unlawful commerce implies not that the voyage is illegal but that the articles transported are forbidden or unlawful. Emerig 149.

A voyage wh interferes with the trade of monopolists is illegal; & insurance there to protect the voyage is of course void; as a voyage to the East Indies by any other than the East India Company. These rules are by Treaty the founded on public policy & do not regard private rights.
Quere. Would the Ins.r be bound if he knew of the illegality?
By Treaty the Americans were allowed to trade with the British East Indies. Under this Treaty, the question arose

arose whether an American could go thro' by a circuitous route as to Europe & thence to the E. Indies. It was decided he could: 8 T.R. 21. 45.
In the same case the question was also raised whether a native English-man residing in America could take advantage of that treaty, decided he could, as he was an American for the purpose of commerce 8 T.R. 45: 1 Bos & Pul 430.-

Of the Perils insured against.

Marine Insurances may be made upon all risks, with a few exceptions, and they may be all inserted in one policy or in several

There can be no insurance agt. the acts of the insured indeed such an Ins: would be giving the insd. license to defraud the thing insd, But it is no uncommon thing for the Ins: to insure agt. the barratry i.e. the misconduct of the Master & Mariners.-

There can be no insurance on an illegal voyage or an illegal commerce as we say.

The Perils insured against, are Perils of the sea, — of men of war, — fire, — pirates, — rovers, — letters of marque jettisons &c, arrests, — restraints, — barratry of Master & Mariners & all other perils, losses & misfortunes whatever.

Losses are either Partial or Total, It was formerly held notwithstanding the insurance, that if the loss did not exceed one per cent there could be no recovery agt. the

against the Insurers. But by the introduction of the

Memorandum this law was altered, & the insurers now by express stipulation held themselves liable only in case the ship & cargo perished.

The memorandum is a writing (now universally, tho' needlessly) attached to the Policy limiting the liability of the insurers in - pursuance of the gen.l terms of the policy.

It exempts the liability of ins.rs to a partial loss in two classes of articles, which in their nature are more perishable than others, & on wh. of course there is a greater risk.

1st Corn, flour salt, fruit & seeds, are warranted free from partial loss, unless the ship is stranded, or there is a general loss.

A Gen.l loss is one wh affects the whole ship, i.e. falls upon all interested in the voyage & cargo, as in case of certain articles being thrown overboard to save the ship &c. - here a gen.l average is struck upon the ship & cargo &c. - here the insurers bear the loss of the exempted articles.

2d Sugar, tobacco, hemp, flax, hides & skins of all kinds are warranted free from partial loss or average, if it is under 5 p.c. Ot. Annes. 79. 91. 29.

What was meant by being stranded, seems to have been a good deal of a question, On one side it was contended that if the vessel was stranded, & a loss afterwards arose the Insurers were liable, Ones if the

Memorandum } altho' it was contended they were not liable in
if the loss were in consequence of the stranding, for
if a ship not went into Ireland with a cargo of corn,
w.h. at time was at the time very scarce there, the
mate took command of the ship & got her on the
rocks, she was afterwards got off; there was a loss upon
the cargo. Eh. J. Rider decided the Ins.rs were liable
Ld. Mansfield afterwards held that the if the loss
was not occasioned by stranding the Ins.rs was not
liable. But Ld. Mansfield held. on affirmance of the
decision of Rider 3 Burr. 1550, 1553. Park 114, 5. 216.
Pothier 210, 260. or 210. 4 ib 115, 782.

As to what amounts to a
a Total Loss has been a question. If a ship is abandoned
to the Ins.rs in a storm, it is a total loss altho' she
afterwards reaches. I so is an anchorage. But a cargo
of corn wh. was so injured as not to be worth the
freight was held by the Ct not to be totally lost as it arrived
to port. And so also of a cargo of fish wh. was
become rotten. But this idea is now exploded. 7 B.R.
210. Park 116. If the cargo is not worth the freight
it is a total loss. 1 Esp. 470.

The Ins.rs are never liable
for losses wh. arise from the act of the Ins.d not
by the acts of the Master & crew unless the barratry
of the master be an insured ag.st. Altho if the ship
was not seaworthy - this being the fault of the Ins.d
or owners the Ins.rs are discharged. Altho the master
sails up a river he is unacquainted with, without
a pilot, he & owners & charterers are liable, the

in master this Sec 5. So far as the loss arises from the bad stowing of the ship; or from ineffectual Dent 186. 5. Roy 120. Beawes 213. 1 Bro Civil 575.

If the vessel is robbed by under pretence of a press-gang, who are liable, the master & Owners or Insurers? It has been decided that the former were liable, how this is treating them as common carriers, who are liable at all events for robberies, but the L.M. will not warrant such a decision, it does not treat them in that character. The true ground of decision is explained by Dole 1 West 196. He says the decision was so given because the vessel was in the body of a county, & therefore the loss was treated as a common hoyman.

On this principle is decided the question as to Packets which go from port to port along the coast. This distinction is taken. If the voyage is a sea voyage the admiralty law is to prevail the Capt. & owners not be liable for the robbery. But if it is merely a coast voyage, it is otherwise, they are then treated as common hoymen 1 S.R. or 5 Roy 210. Beawes 213.

By the principles of the L.M. this liability of the master & Owners extends to the full value of the loss. & this State is the law in this country. In Eng.d they have a St. which does not concern us, restraining this liability of the Owners to the value of the ship & freight

So if any the Insd the loss must be taken among the

Phil. } the continuance of the risk, & this even tho' the cause of the loss arose previous, Case of a vessel striking upon a rock & lay hid up till the time for which she was insured had expired. Insr. discharged, 1 Bl. 260. Stev. 243

The duration of the risk differs according to the different articles. —

If the insurance is for a limited time, then the question is at once settled, & the loss must happen within yt time

The insurance was agt. the barratry of the Master. The vessel had been safely moored for 24 hours, when she was used for smuggling. Insurers discharged altho' the smuggling was done before the risk had ceased. —

The insurance is usually made upon the property "at & from" one place to another or "from" one port to another. If it is a ship that is insured "at & from" a port &c, she is insured from the time of the subscription, till she is safely moored 24 hours in the port to wh she is insured. If "from" the port &c. she is insured from the time of breaking ground till &c. &c to what constitutes breaking ground see Marsh 261. Doug 353. Cowp 609.

The risk on goods commences from the time of putting them on board, or from the time of putting them in boats to put them on board, & the risk continues till they are landed if this is done within a reasonable time p. by the Bay law.

If the goods after being shipped on board are removed into another vessel without necessity the wiers are discharged, but if necessity compels the removal the Ins.rs will be held liable, This laid down in 1 Mar. 345. Where the case was by the terms of the policy the goods Ins.d were to be lighted to a certain port & there removed on board other ships in waiting, those ship not being there at the time the goods were put on board a stone-ship, this being a case of necessity the Ins.rs were held liable. 1 B. & P. 206.

I observed that the Ins.ce extends to the landing of the goods; This lands is a duty of the Master & Owners if there in landing they are lost. but not by their fault the Ins.rs are liable even if ~~not~~ by their fault.

In 2 Stra 1186. it is said that if a man employs his own lighter to land the goods with & they are lost he will discharge the Ins.r because he assumes that he should make use of a public lighter, but in Marsh. 156. this case is not considered as law & I agree with the opinion & suppose the Ins.rs to be liable in such case

The goods must be landed in a reasonable time & this depends upon the usage of the trade; in most countries & by the Eng.h & American rules it must be done as soon as conveniently can, in some countries it must be done in a given number of days. Park 314. see also Doug. which shows that if according to the usage of the trade the goods need not be landed at all, as in the African trade 494. Hennway vs Noble.-

Points. 3 It is a rule that the usage of trade always controuls the policy as much as if it was inserted in the policy in terms; and every person who subscribes a policy is supposed to know the usage. But as the usages vary the Law. they must be proved as particular customs.

Risk on the Ship. If the ship is insured "to & from" a Jamaica, as soon as she arrives at Jamaica i.e. has been safely moored for 24 hours. the risk on the outward bound voyage ceases & that on the inward bound voyage immediately commences. If she is insured for a limited time, the loss must happen within that time, if to charge the Insurers. We have seen that the risk commences from the time of subscription of Ins.r "at & from", & from the breaking ground of "from" &c. —

The rule that the Ins.rs are discharge when the ship has been anchored 24 hours is an Eng.h rule what the rule of the Law, is, is difficult to say as it differs so much in different countries. Park 35. 1 Bl R 261. This is the American rule as well as the English. —

The ship must be anchored 24 hours in good safety to discharge the insurer. Therefore when before the 24 hours had expired she was ordered to go & perform quarantine & in consequence of it was lost, the Insurers were held liable 2 Stra 1248. Park R 211. 2. Amesly 835.

Hence we would infer that if she had been anchored before 24 hours before receiving the order, the Ins.rs would be discharged

Insurance.

Points. A ship is insured to Jamaica, she arrives at one port & discharges part of her cargo & then sails for another port & is lost in the passage, on the Ins.rs hands? It was contended on one side that the insurers were liable till the trade was completed. But in Rl. Rep. 417. The Ct held the ins.rs were discharged by a safe arrival & safe unloading for all loss at the first port. Burr. 341. 1 Str. 406 Stra. 243 Skinner 243.—

The usages of trade here also govern the policy, & these usages are discovered by enquiries of merchants men. It is usual to insert in the policies of insurance on the India trade, that the vessels may be held there for one year to carry on trade in those seas. But the usage to keep them longer will prevail against the Insurers. Burr. 1719. 1703.

When there are used in the policy the words, "to touch, stay & trade to any place, liberty is given to stop, stay & at those places only which it is the custom to stop at in such voyages.

If the words are only to touch & stay, they give no liberty to trade, & if in such cases they do trade, the Ins.rs are discharged 1 Str. 510.
But an usage to trade at those places, as in the India trade, will control the policy. In the India trade is an usage to go out of the direct course for the purpose of trading, Lacy, Lavabre vs Wilson. – Park 50. 41.

If a ship is insured "at & from" a place & the voyage is

is given up. & the ship is lost in port. the Ins^rs are discharged the moment the voyage is abandoned. but this must be proved. —

Risk on the Freight. The risk on the freight with the putting the goods on board with the intention of lading. Stra 1251. 3 Bl 362. after this the Ins^rs will be liable tho' the ship be lost in port.

If the ship sails from one port promptly to take her cargo on board & is lost in the passage the insurers will be charged 3 Bl 362. 6 it 475. Stra 1251.

It is a gen^l rule that the risk cannot be changed, so that whatever is done to increase the risk, without the consent of the Ins^rs, discharges them. This is a very important rule.

In 5 Bl 598. There is a case where after the policy was signed a war broke out. & the Ins^d without the knowledge or consent of the ~~owner~~ Ins^rs took out Letters of Marque, but not with the intention of using them but merely to obtain sailors more readily, the letters were not made use of. but the Insurers discharged on the ground that the risk was increased. I cant think that the risk was here increased, but rather diminished as the ship was enabled to defend herself, the true reason for discharging the Ins^rs I suppose was the temptation the Letters afforded to deviate in case of falling in with a fine looking ship. —

Agn in 5 Bl. 277-9. The case was the same only the Ins^d did not take out a certificate; as it cost something, without which they did not lawfully cruize; they did cruize in truth

stranding

attending & still the Ins.rs were held liable; now this is a much stronger case than the former, for here the risk only was increased — whence it wd. seem that the Ins.rs should have been discharged. —

Of the Policy

"Policy" is derived from an Italian word signifying "indemnity". The contract is on the part of the Insurer the Premium is the consideration, which is always a matter of agreement & discretion between the parties.

Policies are either open or valued see them described supra. pa.

It has been contended that valued policies are the class to wagering policies, they do, — but the Ct will, aside from the circumstances of the case whether this was the object or not, In order to make it a Wager Pol. the both parties must understand the design, A an over insurance will not constitute the Policy a Wager Policy unless it was made with that design; whether for a wager or indemnity is the question, see supra pa 2 & Vern 715. 771. & 1171.

On every policy the Premium is acknowledged to be received, but this is no proof that it has been received, but only operates so as to preclude the other party from shewing a want of consideration, — the Ins.rs can sustain an action for the Premium: —

The Policy may be effected

Which effects either by the Insured himself or by a Broker. The latter is the most usual way of having the business done, in this case the Ins.r looks to the Broker for the premium & the Broker to the Ins.r for the damages tho' in some cases the Ins.d may sustain the action against the Ins.r. If the Broker fails the Ins.r may recover the premium of the Insured. The Broker is here a go-between, & on his default the parties themselves meet.

Insurances are often obtained by merchants in foreign countries by means of Agents, who transact the business by application to brokers or at their princ.l w.h.s. This agency must be constituted either by an express or implied auth. for this purpose. What constitutes a man an agent for insuring, indeedy has been a question. The cases are these, 5 Burr 2725/75 2 B.R. 1188.

1st A merch.t abroad has effects in the hands of a man here - he may then direct him as his agent to insure & he is bound so to do, for the principal has a right to do with his own property as he pleases. But this is not a C.L. idea that a man is obliged to look upon himself a trust.

2d Then ~~has~~ are no effects in the hands of the man here, but there has been a course of dealing between them, one has been used to send orders to the other to insure & he has complied - this constitutes the agency. Factors are bound to insure.

If a Merchant sends bills of lading to his correspondent with orders to insure, the merchant cannot accept of the bills of lading without rendering himself liable if he does not insure, for this is the condition on which he is to have the bills 1 D.R. 22. 2 D.R. 158. Marsh 205.

If the agent is guilty of any neglect or unskillfulness whereby the policy is avoided, or it is not obtained; he renders himself liable to the principal to the same extent as that to which the Insurers would have been liable — & this even tho' no wrong was intended, as if he misrepresents facts, or conceals them even tho' he thought them immaterial; in consequ.e of wh the Ins.rs were discharged, he will be liable to principals — 7 D.R 157.

If the Agent refuses to give the premium which is usually given at that time on such voyages, he will be liable, but he is not alleged to get the Insu at all events 2 D.R 189 n. Marsh 208. —

If a loss happens and he mistakes the business he becomes liable as Agent (unless forbom will or account for the ofs 1 D.R 94. 1 D.R 14.

The policy will become as ineffectual on account of any thing done by the agent as if done by the Ins.rs themselves 4 D.R 157. Park 303, 308.

If the policy is avoided in consequence of any act of the agent, he becomes liable himself.
But on the other hand if any thing is done by the Ins.rs of

Policy, agents } that the Ins.rs could have availed themselves, of that the agent may avail himself, as deviation, not sailing with a convoy, when the stipulation on the part of the Ins.d was that she should; — Or the ship was represented to be neutral when she was not, &c, &c. Park 323.

It is a common thing for the agent not to act upon the order he receives for insurance, — in such case he becomes the Ins.r himself & as such is entitled to the premium, & liable for the damage, there in case of controversy as to the point between the agent & Ins.d, the latter brings an act.n of trover for the policy ag.st the ag.t, who is not allowed to plead that he never obtained one, for it is presumed that he has obtained one & this presumption is so strong that it cannot be rebutted & for the same reason the agent cannot be sued for not obtaining the policy; But in this act.n of trover the pltff recovers all the damages he has suffered — on the ground that deft. has recovered the same from the Insurers, Park 4.

Policies are often offered & a blank left for the insertion of the Lab.s name, or other thing, this by the L.m. is legal But by Lt in Eng. those blanks must be filled up.

Of the description of the Ship.

The Ship should be specifically named when it can be done for the Ins.rs are entitled to know the risk & nice insure for a big premium on one ship than they will on another. But there are exceptions to this rule

or in case of an exchange of one ship for another the goods are ordered out. It is not known in what ship they will come in

The species of vessel should be mentioned for an insurance of a schooner for a ship and be void on the ground of fraud, as it may lessen the Ins.r and not have ins.d a schooner. However if and in no degree increase the risk it will not avoid the policy; the criterion is whether the circumstance did alter the mind of the Insurer. 1 Emerigon 164.

If the ship is a letter of Marque it must be mentioned for the risk is increased. 1 Emerigon 164.

Letters of marque are always insured for a limited time; One was ins.d for cruising six weeks, it was contended that she might cruise six weeks at diff.t times, but the Ct held that six successive weeks were intended. Lees vs Bridge & ang. Molloy ch. 2.

The name of the Master in general must be inserted; If one is mentioned & the master is changed, the Ins.r will be discharged, for he might have placed confidence in the first.

But if J.S. is named as Master & the clause added "or who ever else may go Master" it is then left to the discretion of the Ins.d to send as Master who they please, the criterion is the intention of the parties.

If a name is inserted for the purpose of avoiding it will avoid the policy, ex. the name of J.S. the old master; when a negotiation is made with B. to go as master.

Policy. The Subject Matter Insured must be mentioned. — as goods, freight & specie. The goods must be particularized. But they may be insured by the general terms goods, wares & merchandise, But if goods are particularized, those only can be mentioned come within the policy, as when the articles insured were oil & ashes & the [illegible] was soap the Ins. was disch.d

But a distinction is here taken, that if the articles on board can be turned into those insured the Ins.r will attach, as the oils & ashes may be turned into soap. which so when the Ins.d was on ingots of gold, & the prop.y was gold plates, the Ct held that the Ins.r attached as the gold plates can be turned into ingots of gold 1 Emerigon 299. 300.

Bottomry Bonds must be described as such 3 Rus 1 94. But by the usage of the India trade they may be insured as goods, Park 185.

But there are some articles which are the subject of insurance & wh do not come under any of the above description, as Masters & Mariners clothes, Ship stores & the cargo lashed to the deck. The reason why the latter should be specifically named is that the risk upon them is much greater than that of upon the rest of the cargo. 4 Bos & Pul 206. Park 20. 21.

It has been a question whether bullion, foreign coins not current pieces &c ought to be mentioned or not. By the decisions it seems that so far as they are articles of merchandise they

they come under the gen^l discription of "goods" but if they belong to a passenger as the jewels of a lady, they are not ins^d under the gen^l term "goods" — but to be ins^d must be named. 4 Burr 1946. Park 206.

The Voyage must be described, as the time of commencing the risk, the port of departure & that to wh she is bound, Molloy Book 2. c. 2. And if the port be unduly set forth the policy is void.

Ch Ins^d on a Letter of Marque allowing her to cruise six weeks was held to mean six weeks in succession Molloy book 2^d ch. 2^d

It is a rule that if the ship deviates from the voyage insured, except from necessity the Ins^rs are discharged

But if she is taken or lost before she arrives at the point she intended deviating from, the Insurers are liable notwithstanding the intention to deviate; E.g. if ship was ins^d to go from Baltimore to London, she intended going to Cork & then to London as was allowed from testimony, she was taken before she came to the dividing point, & the Ins^rs held to be liable, but had she been taken beyon the point of deviation on her way to Cork the Insurers wd have been discharged.

There is a case wh seems to conflict with this rule, a ship was insured for Lisbon, but she clear for Falmouth & her cargo was calculated for that market, & it appeared from other testimony that she never intended to go to Lisbon

Policy) Perhaps, she was lost before arrival at the point of deviation, & the Ins.rs are discharged. The distinction between these cases is this. In the former case there was an intention to go to the port she was insured to, in the latter there was no such intention; it all depends upon the intention, see Woodrige vs Boidell Doug, Part 299. 2 TR 808. n 3b. & this was the old law as see 2 Wm 343.

If liberty is given to touch at a port & the ship does not touch at that port it has been contended that the Insurers are discharged, but this is not so. it means nothing more than that she may touch & stretch as the Master Doug.

If there are several courses to a port after arrival at a certain point, the Insurers are entitled to the opinion of the Court as to which is the best. or in other words the Capt may go what course he think best if not deviate it may be go by the Insurers. If he is obliged by the Ins.rs to go a particular course & he is lost the Ins.rs are discharged. But if he in pursuance of his own judgt disobeys those orders & takes another course & is lost the Ins.rs are liable 1 Dr 152.

When a ship at sea is insured it is usual to insert the words "lost or not lost" in the policy, and they cover the past as well as present & the future. But if anything is known wh may excite suspicions as to her safety & it is not disclosed, it will be found agt the Ins.rs & vacate the policy

It is a common thing to add to the policy a clause empowering the Master &c. to do any thing in their power to save the ship and at the expence of the Insurer. But this clause is unnecessary as the Land Merchant constitute the Master & Mariners agents of the Ins.rs for this purpose as much as if they were employed for the purpose.

To all this is added the Memorandum & then the Policy is complete

The Policy being a mercantile instrument, if a mistake is made in it, as by using one word for another, or in a sense it does not impose Ch.an.d will correct the mistake. This cont be done of b.d instruments 1 Vez 317, 10 Mod 545. Salk 444.

It has been laid down that a Policy may be controlled by a parol agreement. but this has been doubted, for no reason why this should be the case by L.d Ken. when it is not so G.d B.d Salk 444.—

Warranties, are engagements either express or implied entered into by the Ins.d They are in the nature of conditions precedent. — a breach of which will always discharge the Ins.rs whether the loss happen in consequence of that breach or not Cow 607. Burns. P. 80.

Express Warranties, are either affirmative or executory.

Affirmative Warr.s are engagem.ts on the part of the Ins.d that the sub. matter is in a certain state — as that the ship be of a given force or that she is neutral.

Warranties) Executory Warr.s are engagements that something shall be done — as — that the vessel shall depart with convoy — shall sail by a given day, &c.

Implied Warranties are such as the law imposes upon the Ins.r — as that the vessel is sea worthy at the time of the Insurance Burns, 42. 2. That she shall be navigated with skill & honesty — that she shall not deviate &c

1st Of Express warr.s and Representations — 2d of Implied Warranties. —

1st Express Warranties. They must be exactly performed, or the Ins.r is discharged — no matter how immaterial the breach of warranty may be — it vacates the policy Ex. A Warr.d to sail from Liverpool with 50 hands or upwards on board, the vessel sailed with but 46. but in six hours afterwards took in more so that the number exceeded 50. — she was afterwards captured — & the Ins.r discharged 1. Ld Ray, 343.
So if the breach had been inevitable, as a forcible detention by an embargo or an order from Govt. Cowp 984. 606. But if she once fairly clear the port a subseq.t detention by an embargo &c does not amount to a breach Cowp 591. As sailing to the convoy & is then detained — Ins.r liable — vid. infra —

The warranty however wh requires such strict compliance must not only be appear on the face of the policy, seems to a mere representation, Ex. a written paper wrapped up in the policy or attached to it by wafers is not a warranty, Birge vs Fletcher Doug 271. Dawson vs Bonnevell Doug 12 notes, Cowp 785. 791. Burns 56. 178 —

So that the rule is, that the compliance must not only be substantial but literal. & herein it differs from a representation, — another case from Cowp. 784 A Warranty was given to sail from Martinique for Eng. after a certain day, the ship sailed to Guadaloupe before the day, took in her cargo there — but did not return to Martinique — but after the day agreed on sailed for Eng.d — Ins.rs was discharged. —

The case above in wh the Ins.rs were held liable when the vessel ~~had~~ was detained by an Embargo, after she had cleared the port in search of convoy, is said to form an exception to the rule, but I apprehend it does not. — It only proves that a vessel may go out of her course to obtain a convoy — for as the ship left her port of load.g having a full & complete cargo on board & having no other view than the safest mode of sailing to her port of delivery, her voyage must be said to commence from her departure from her port. Bond & Mutt. Cowp. 691 784. 601 606. Park 326. 338. Ellefson & Ferguson Doug. 545. Burns. 84.

The words "at & from an Island" protect a ship in going from port to port in that Island.

If the ship sails on or before the day warranted, & is driven back by storm or the enemy & cant get out again till after the day warranted, — but does as soon as possible, Ins.r is still liable Cowp. 784. 601. 606. 7. Park 326.

What constitutes a sailing within the meaning of an express Warranty. There is no doubt that when a ship fairly breaks ground & is under sail upon her voyage, tho' the distance

the

Warranties) she might run be ever so short, & put back for a good reason, it amounts to a "sailing" & also to a "departure" as the ship has not sailed out of the port. Marsh. 251. Cowp 604. Doug. 95n.

The Warranty to sail with convoy must be literaly complied with. To depart with convoy is to depart with a naval force under the command of a person appointed by the Govt. of the country to wh they belong. — & not every man of war that chooses to take a Merch.t ship under its protection, Burns 85. Tho matter how strong may be the force, if the commander is not thus appointed, it is no convoy. Park 339.

A ship may always sail in the place of rendezvous, wh is always appointed by Gov.t, & if taken before she arrives there the Ins.r is liable altho the war.d is to "depart with convoy." Park 443. as where there were two places of rendezvous, the Downs & Spithead, she sailed to the former, the convoy from that place had departed. She then sailed for Spithead, — was taken, & the Insur.s held liable. 2 Ltra 1265. 1 Emerigon 156. Park 36.

Tho' the words commonly used in this warranty are "to depart with convoy" to sail with convoy the only effect they extend to sailing with convoy throughout the whole voyage, as much as if it was so expressed. Burns 88. E.g. It was agreed that there shd be a return of part of the premium, if the vessel sailed with convoy from Gibraltar to London, but she sailed with convoy only part of the way. A proportional part of the premium was ~~returned~~ claimed. The Ct decided it shd have been a convoy for the whole voyage & not for a part of it, so the Ins.r was not bound to return any part of the premium. It wd.

ind seem however, upon equitable principles that the Ins.ce was entitled to a proportional part. Selby v. Wm Doug.

It does not however mean a convoy to the port of destination, - but so far as Gov.t has provided - as to a certain latitude - the warranty is then fulfilled. 2 Ark 557. 565. Marsh 269. 1 Bos & Pul 111.

Sailing with a man of war appointed to conduct a ship to her place of rendezvous may be a sailing with convoy. E.g. Ship Ins.d from Portota to Eng. a frigate was sent to conduct her to St Kitts the place of rendezvous. On the way to St Kitts, they were driven from their course, - it then being easier for the ship to go to Eng.d than return to Portota or proceed to St Kitts, she bore away for Eng.d - was taken & the Ins.rs held liable see cit. Marshall 269. 1 Bos & Pul 111. Where a man of war was sent to conduct a ship from Oporto to Lisbon, the place of rendezvous. on the way to Lisbon they were seperated by a storm, Ship bore away for Eng & was taken, & Ins.rs held liable - In both these cases, the ship sailed with convoy appointed by Gov.t

Eg. the Contract was to sail from Cadiz for Amsterdam with convoy, now it is a practice to have a convoy from Cadiz to Eng, & another from Eng.d to Amsterdam - this is what is called a Relay. - The ship sailed with convoy to Eng.d but when she arrived there, that fleet for Amsterdam had sailed. The ship proceeded & was lost. - The Ct held that the warr.y was complied with, as the ship sailed with convoy. - Park 249.

Exp. Remarkes) The ship in q. must have sail d. instructions from the commandant of the convoy, & if she sails without them, gen.l speaking the Pro.ts is discharged — the sailing orders must be either written or printed. Park 293. 1 Bos & Pul 56. Stra 1250. Park 341. 293. 2 B&P. 57.

But if after joining the convoy she is prevented from ~~getting~~ the sailing orders from necessity or the act of God, as stress of weather the Answer will be bad; so that in this case she may be said to sail with convoy without orders. 1 B&P 25. 2 Stra 1250. Park 341.

Yet the least negligence discharges the Insurers. Q. The capt obtained the sailing orders immediately after sailing when he might have got them before — the Pro.ts were discharged 1 B&P 164.

The ship must continue with the convoy if she can no neglig.t nothing short of absolute necessity — as stress of weather will justify a separation. Park 349.

And when separated by necessity she must join the convoy again as soon as possible. Park 26. Show 346.

Another war.t wh is com.n in time of war, is that the property is Neutral i.e. the property of persons belong.g to a nation in amity with the belligerents.

If the property then is not neutral, the policy is void & it will be immaterial whether the property is lost by capture or not.

But if the property becomes that of ~~neutrals~~ an enemy, by the

the breaking out of a war subseq.t to the beat.g & making of the policy & warr.d — the Ins.rs are liable Eden vs Parkinson Doug 708. — for a det.n of war either leg or eq.t the neutral is one of the risks ins.d agt.

The judgments of foreign Cts on the subject of neutrality are treated gen=erally like those of our own country. Being conclusive evid.e of what they determine. — So that if the judg.t is that the property is not neutral, the Insurer is free dis=charged — By the L.M. such judg.ts are good evidence all the world over 1 Emerigon 188. Burns 178.

But it must be the judg.t of a Ct hav.g a regular, competent & complete juris=diction — In France however they have refused to be governed by this universal rule. 1 Emerig 458. — The French appointed Consuls in Norway & Spain &c & there they erected Cts by wh our vessels were tried & condemned as enemies property, at a time when we were a neutral nation — a time of most unparalleled audacity — Such con=demnations being illegal, the Ins.rs have in such cases been always found — The Cts had no jurisdiction 3 B.R. 256. Beawes 14 or 334. Park 361. Burns Ins. 178. 9.

In these cases the special ground of condemnation must be set forth when the judg.t is contested, & if that does not prove the property not neutral, the Ins.rs is of course held liable. 7 T.R. 543. 631. Doug 375. But this rule does not ap=pear to be fully settled. In our treaty with France it was agreed that our vessels should have their own equi=page. i.e. a Roll of all the Mariners. Vin a case in wh a

Morris. Neutrals) a vessel was seized for not having such equipage, she was condemned & the want of equipage assigned as a reason — Now the want of equipage is ground of suspicion only; so that the vessel might be seized & brought into port. — But not condemned, Hence the Ins rs should have been held liable. Park 361. Bernadi vs Motteaux Doug 575. But the rigid rule seems to have been followed, that as the jurisdiction of the Ct was complete the judgt was conclusive evidce that the ship was enemies property, & so Insurers were discharged. —

It was the opinion of Parsons & many other eminent men of this country, that if the sentence of condemnation in pointing out the evidce on which it was founded, did not clearly prove the property not neutral, the sentence should not be conclusive, & to this effect is there a decision of the Massachusetts Ct. & the Insurer held liable.

There was a case of insurance from Venice to London, — the French seized the vessel & condemned her saying the goods were consigned to the enemy, for they had reason to believe the Capt threw the papers overboard — & by an ordinance of France, throwing the papers overboard was ground of condemnation, — But this by the Law is not conclusive evidce of non-neutrality. 4 Ed R 763. 6 Ds Mass. 297. 8 Ed R 192.

A Capture of this neutrality discharges the Insurers. E.g. If the right of search is opposed & damages arise in consequence of it as by firing on the ship the Insrs will not be bound to remunerate, for as the right of search exists in all cases of neutrality, by opposing it

in the ship declares herself not neutral, & forfeits her privileges as a neutral.

From the little that can be learnt from elementary writers on The Right of Search, it appears that no nation has ever asserted this idea, for it wd be useless to declare articles contraband of war unless there was a right to search for such articles.

A Port blockaded must not be entered by a neutral, if taken in the attempt the Ins.ce is discharged for the neutrality is forfeited

The doctrine that "free bottoms make free goods" (free from search) is untenable from the face of it — for there is no way of ascertaining whether they are free or not, but by search; no one ever doubted but that enemies goods in neutral bottoms might be taken, with bottoms more, & even he did not deny the right but only said it ought not so to be. Bynkershoke (a Dutch one of the best maritime lawyers in the world) and Grotius & Puffendorf all lay down the principle that enemies goods found in neutral ships may be taken Vattel agrees & adds that if resistance is made, it is a forfeiture of neutrality. Vattel Bk 3. Ch 2 or 7, or 113.4.

The law among some nations has been made even more severe than this, In France it was established in the year 1653. that the ship should also be forfeited. 1 Emergon 455. This being directly in the face of the gen.l rule of law was altered in 1650. - restored in 1681. & finally repealed in 1704. so that it then became

Man. Neutral became similar to the law of other nations. In all treaties between diff. nations they refer to this as a settled rule, "That enemies property in neutral vessels may be taken, that belligerents have a right to search for such property & that resistance amounts to a forfeiture of neutrality." The consequence of wd is that the goods are forfeited tho' the ship is not.

In the Treaty between Holland & America in 1798. this principle was recognized, tho' altered at that time by mutual consent, it being agreed that there should be no search if the vessel was in company with a ship of war. The same principle has been adopted by Spain & Sweden 8 TR 23. In Stark 363 there appears to be some doubt expressed sed vide 8 TR 256 & to 273. Robinson

To overturn this law, the Northern Powers in 1780. formed an armed neutrality, considering the law oppressive they resisted & endeavoured to overturn it, but they did not deny that there was such a law. The scheme was well countervailed by the French Govt. but the Eng. wd. not give up the right, tho' they relaxed for a moment their usual vigor in the exercise of it having been exhausted by a tedious war.
Another armed neutrality afterwards arose and as is generally known was crushed by Lord Nelson — It is for the interest of the commercial world that this law shd not be changed.

Resistance to the exercise of this right I believe discharges the Innocence in all countries, In Port

Part 69. this seems to be doubted,— he says that in the case the Ct decides that the resistance was justifiable an endeavour having been made to enforce a Spanish ordinance wh amounted merely to the Lib. right of search, but I apprehend that the true ground of resistance in that case was because the Spaniards hoisted Corsair colours, & Corsairs do not regard the principles of the commercial world. We have indeed been lately endeavouring to teach those in the Mediterranean the principles of the Law here, but they are dull scholars

Neutrality may be forfeited by sailing without proper papers, wh are always expected to be on board, & none of wh are always required by the Law of Nations & others by treaties between individual nations, but the forfeiture in this case is only so far as to discharge the Insurer. No Nation except France ever pretended to condemn a vessel for the want of these papers when she actually proved neutral,— but as it increases the risk it discharges the Ins."

The requisite papers, are a Pass-port i.e. a permission to navigate from the neutral Govt., & Sea Letter. Proofs of the Prop.s on board & if the vessel is foreign built, how they came by her, an Equipage or Muster Roll, & Charter Party, if the vessel was chartered, & Bill of Lading & a Log Book. The want of these is prima facie tho' not conclusive evid.e agt her neutrality, i.e. it is ground for detention tho' not for condemnation.—

War & Neutrals. The vessel must be navigated in compliance with Treaties, otherwise the Ins.rs will be discharged as in the case of the ship Atlantic. It was agreed in our treaty with France, that our vessels should carry passports. This vessel had none when she sailed, but stopped at Guernsey & obtained one; she was afterwards captured, and condemned for the want of certain papers. - The Insurers were discharged because she had no passport at the time of sailing. - 7 T.R. 705.

In time of War it is usual for the different nations to make maratime regulations for themselves in the nature of private ordinances. Now if damage arise from disobedience to such regulations the Insurers are not discharged - for they do not arise from treaty or any principle of the Lex Mercatoria; But if the Insured knew of the existence of such an ordinance, he ought to give the Insurers information of it, and if he does not, the Insurers will be discharged, as when it was enacted by an Ordinance of France that if the Supercargo should be a subject of a Nation hostile to France, the Ship, cargo & all should be forfeited. In this case the Insured knew of the ordinance and did not give Notice, so the Insurers were discharged. Park 362. 2 Ch. 69.

But when by a Treaty between two nations, it

it is necessary to have certain papers on board as a proof of neutrality, the want of them is proof of non-neutrality. Park 158. & Sc. 343. Marshall 323.

The law then appears to be this. That any breach by contradicting the Lex, Mare, or any breach by contradicting Treaties amounts to a forfeiture of neutrality, and discharges the Insurers. But in case of private ordinances, the Insurers are liable if a loss arises from a breach of such ordinances, unless the Insured knew of the ordinance & would not inform the Insurers.

Representations are not warranties, or conditions precedent, but collateral statements of facts either in writing or by parol. — They need not appear on the policy whereas, warranties must. Burns 81. 2.

A Representation must be substantially or equitably complied with, or the Policy is void as misrepresentation about the day the ship sailed Park 176. So too a representation that the ship is neutral, when it is not so, vacates the Policy & this whether the ship is wrecked or lost by capture Park 176. If the assertion was that the prop^d. was neutral & the assertor did not know whether

Warr.ty. Representat.n} whether it was so or not it wd be suff.t to avoid the Policy. In Cow 789 the Ins.r said he believed it was neutral when it was not, & Ld Mansfield said that this was not suff.t to avoid the policy. I shd say that whenever the representation induces confidence & it turns out untrue, the Ins.r shd be discharged.

The great distinct.n between a warr.y & representation is that the former being a cond.n precedent must be literaly complied with - the latter need only be substantialy true

It has been a common practice to get a man of high character to insure first in order that others seeing his signature may immediately insure, this has often induced false representations to the first underwriter, & after getting his signature to omit these represent.ns trusting merely to the influence of his name for getting other underwriters, But it has been decided that if the first is discharged on account of the misrepresentation, the whole shall be discharged Cowp 786. for the Ins.rs might not have ins.d at all or wd have calculated the premium differently, were it not for the reliance laid upon the judg.t of the 1st Ins.r Doug 294. 295. 297. Park 182.

Fraud or deception in the representation always vacates the Policy Ellra 1168. 1 Ed 12. Park 182. 208. 1 Eq. Ca. 373. So that on the whole a material misrep.n made either by Ins.d or his Ag.t, through fraud, negect, or mistake, avoids ye Policy, Park 208. 9. 104. 182. Burns. 49. Doug 295. 271. Cowp 275.

There was a letter written by ye owner of ye ship ordering her

Representations } her to be insured, & after the rep
ette was put into the Post office the owner
heard his repel was lost, but he let the letter
go on. & the Ins.ce was made. It was determ.d
the Ins.rs were discharged but if he had not the
heard of the lost till after the post had gone out or the Ins.ce was made they
would have been liable 1 Str 19. 1 Bl. R 594. 2 Bur 1909.
If the Rep.n is substantially true the Policy is good
see Cow 785

Question. The Policy state from Eng. to the
cape of Good hope then to Calcutta & back again
but on shaking on of subject there was a rep.n
made that the ship did not intend to go but
a part of the voyage, Shall the Ins.rs be bound
by the Policy? It is decided that he was bound
to the extent of the Policy Pyes vs Elstone Dougl.
A Rep.n that the ship was ready to sail when
she had sailed is held to be a false rep.n (c)

Concealments as well as direct misrep.n
will void a Policy, such as a concealt.n of defects
in the state of the ship, or the concealt.n of the
employ.t or what had been heard of her, will void
the Policy let the loss arise from any cause
whatever 2 Stra 785. 1183. 2 Bl. R 953. Park 182.

A Rep.n that the ship would be ready to sail on
21. & she did not sail till 23d. was held to be
a false Rep.n Park 182.

So to state Ins.d in his letter state that his repel
sailed from Eng for the coast of Africa & was then
on the 6th of May, when he knew she sailed for the

(c) The which carried, more fully, but of together one to, not of many men, that, more, a fact
that, reason, rep.n would be - but that the Ins.rs ought to have had the Ins.rs ought to have had the Policies

Representations } West Indies on that very Day — the Ins.r was dis.d? Park 101. 105.

So where a Clerk was written to informing him of the loss of the ship & he then goes & obtains an Ins.r from a neighbouring merch.t the Ins.r was discharged. Park 209.

So too when a Merch.t received information that his ship was to sail on the 25th Nov.r & some time after another ship arrived informing him that his ship had actually sailed, — being alarmed at this he gets her insured without relating the circumstance — Ins.r dis.d? 1 Park 373.

If the Service is to be attended with any extraordinary danger, the concealt of it will discharge the Ins.r Shelly vs Wilkinson Doug.

All doubtful rumours ought to be disclosed & just as they are 2 Str. 1171, 2 Stra 1183. This was the case of a rumour that the ship had foundered at sea & the Merch.t had her Ins.d without noticing the rumour. — the risqué was lost but not by foundering & tho' the Ins.r was dis.d? such a rule as this is founded in Policy —

Also it is a gen.l rule that you must disclose all facts com.g to your knowledge, yet there are certain things wh. need not be disclosed — as political speculations, — dangers of the voyage, — variations of the seasons. — probability of War or Peace, but the fact of the declar.n of War or the Peace concluded ought to be made known) dangers of the trade winds, — matters open to the

representations & knowledge of both parties, &c 1 Bl 594. Burr 1909. this last has all the law on the subject.

Mariners are not bound to disclose where they are going about /Park 195, 229. & Burr 1905 a 1950, 1 Bl. Rep. 593./ but other ships must.

Whatever the Ins.ⁿ has undertaken by Warr.ⁿ they need not disclose — such as the state of the Ship, for they are bound by the implied War.ⁿ to have her sea-worthy &c. Park 229.

Implied Warranties.

Impl.ᵈ War.ⁿ are such as are imposed by Law & are the following.

1st that the Vessel is sea-worthy, ie capable of resisting the ordinary perils of the sea altho she might have been lost in a storm, still if it is apparent she would not have been lost had it not been for some latent defect — she is not sea-worthy & the Ins.ⁿ is dis.ᵈ. The dis.ᵈ. you perceive is not on the ground of fraud. — She must be sea-worthy at her departure.

When she is lost in the course of the voyage without storms &c the presump.ⁿ is that she was not sea-worthy & the onus prob.ⁿ falls on the Ins.ᵈ to shew that she was sea worthy. That if she is lost by storms, ship of nature & acts of the presump.ⁿ then is that she was sea-worthy, & the onus prob.ⁿ lies on the Ins.ᵈ to shew she was not.

The ignorance or instance

Impl. Warr. } innocence of the Ins. avail him nothing on this point / Marsh 364. / Thus when the repel was lately & got lost the Ins. was disch. March 369.

It happens sometimes that the repel is alow & the Ins. does not know her state, yet the mod. not diff. Park 221. 5 Burr 2804. The quest. on this subject is "was the sea-worth at the time of departure?"

2d. The ship must be properly manned — there must be the usual & proper care taken of her. Therefore when in sailing up a River, the Pilot was discharged, before he ought to have been & the repel was lost, the Ins. was disch. by 2 Str 1260. 5 Burr 2804.

3d. That the repel be furnished abundantly with provision, that is such as will last the longest voyages that are usually made.

4th. That the ship shall not exceed from merch. be charged — Ins. of the good. — The Law on this subject very liberal: for if the Capt. find a ship going to the port & the merch. can't go in, he may put the good on board of the other repel 1 Str 611. So also in cases of merch. he may hire another ship to prosecute the voyage at the expence of the Ins. If that is done with is best for all concerned the Ins. is liable — the pays all the expence of salvage, new lading duties &c. The Capt in such cases does not know for

Insp.: Warr.: } for whom he is acting for perhaps it may be one of those cases in wh. the Ins.d has a right to abandon, If he does all that is for the best. the Ins.rs are liable if the loss does not arise from the Bailees fault — in such case the Ins.rs are discha.d 1 Emer 432. 546. 681. 801. 652.
But if the Ins.rs are agt. the Barratry of the Mast. he is liable altho. the loss arise from the conduct of the Mast.

The rule with reg.d to ins.g a specific ship is dispensed with in many cases as on a ship coming from a foreign country now unknown — Where a Merch.t directs his agt in India to ins. £10.000 on ship or ships & the goods are put on board diff.t ships, if one arrives & the other is lost then both policies are liable & both must contribute, But if the Policy is appropriated in a much ins.d on one ship & much on the other, & one is lost, then both policies are not liable & they do not contribute. 2 Bl. R. 345.

5th It is an Insp.d Warr.d that the ship be navigated according to Law & Treaties. The case of the Maryland ship explains the rule of Law. The navig.g from Mary.d to Eng. has not warranted neutral. she was capt.d & condemned by the French as enemies prop.y Now this did not discharge the Ins.r for she was not navig.d neut.y. The French in stating the reason of her condem.n say that she had violat.d

Engl. & Man. } violated certain orders of their own. The Ds. allege the mod broke the treaty & ergo the French had a right to condemn her. The Ct. decided that this only held the point that it purports to decide viz that the was enemies bottom. & that they do not meddle any thing in the course of the trial wh does not relate to this point may be drawn the mill." That the sentence of a foreign Ct is conclusive as far as it relates to the thing they profess to decide — tho' the sentence is conclusive, as collateral facts is concluded by it i.e. is not prevented from being enquired into 2 Str 192, 197. March 292.

6th. Engl. & Man. rarely is that the vessel shall not deviate, that is she shall go in her usual course — This does not mean the shortest way, for altho' there be a shorter course, she must go in her ordinary course, she has however a right to put in to such ports as are customary in such voyage

If such ports are out of the direct course the vessel may put in 1 Burr 345 Isle of Man case. The vessel sailed from Liverpool & put into the Isle of Man wh was out of the course — The Ds. was discharged, because altho there had been instances of the like before, yet it had never been the usage to stop there Cowp 601.

If she means to go a new & unheard of route the Ds. wd know of it 1 Burr 345. Cowp 601.

A Deviation does not vitiate the policy

unless

Impl. Warr. } holding wholly, for it discharges the Ins. only from the time of deviation, so that the Ins. is liable for all losses arising before the time of deviation. 2 Ld Ray 1441. 2 Lal 444.

The smallest deviation is suffl. to disch. a Ins. & this altho' the loss does not arise from the devia. but from some other cause, & the Ins. is disch. altho' after deviat. the vessel may have come into the usl. course agn. Deaves 315.

The policy may provide to touch at other ports besides those in the ordinary course, but if the vessel touches at any other besides those mentiond unless warr. by the usage of the trade — the Ins. are discharged. Bas C. C. 449.

If there are several ports of disch. mentioned in the policy they must be gone to in the order in wh they are mentioned 6 BR 351. 531. If they are not specified in the policy they must be gone to in their natural order, i.e. their geographical order. Thus where a ship was going up the Mediter. & the ports of disch. were Marseilles, Genoa & Leghorn, when she came to Marseilles she did not get in a sufficient on to Genoa, but in her passage from Genoa to Leghorn she was lost. The quest. was wh a Ins. be discharged. — Ld Ell laid it down that if the ship & weather was suffl to prevent her from getting in, the Ins. wd be liable, but if there was no act. real impd for want of port, the Ins. wd be disch. 6 BR 570

Emphl. v. Waters } Park 330. 1 Roc & Pul 313. Marsh. 399.

Suppose the words of the Policy to be "to touch at one or more ports in a country" — it means any one port in the course of the voyage. Eng. to a ship sailed from Eng. to Lisbon & went out of her course to a port farther south. The Ins. were discharged altho the words of the ~~words~~ of the Policy were a close Lefevre vs Wilson & Embers vs Watson Day. Marshal 397.

If Letters of Marque cruise, it will be considered as a deviation unless they have liberty to cruise, they have a right to defend themselves, & if an enemy comes in sight they may chase, but have no right to go in quest of prizes Beaves 316. This is a case on wh there has been some diff.ce of opinion. The Lett. of Marq. came aboard an enemy in the day time & gave her chase in the night lost sight & in the morning came aboard her agt., qu. was the Ins. disch.d? — There appears to have been some fact left to the jury, wh fact in my opinion must have been "whether the Lett. of Marq. cruised after the lost sight of the chase" The jury decided agt. the Ins.rs. Upon this the Rule is "that they have no right to go in quest of the enemy, but if he comes in their way they may give chase.

In trading voyages on the coast of Africa there is a certain time allowed to tarry on the coast, & in a case where a ship should tarry than

Empl.t & Wav.n & than this time, it was held to be a deviation and the Ins.rs discharged Park 319. or 331.

The old idea was that altho' they had another voyage in view, yet if the ship was taken or lost before she came to the dividing point the Ins.rs were not discharged. The rule now is if the voyage intended was not the voyage ins.d the Ins.rs are disch.d no matter whether she was lost before or after she came to the dividing point 1 Stra 249.

However if the deviat.n arises from necess.y the Ins.rs are still held liable, for if the Capt does as well as he can a deviat.n may be excused, thus, a deviat.n may be made in order to avoid danger, or when it arises from stress of weather, & where the deviat.n arises from necess.y the Capt is not obliged to return to the regt course ag.st 1 Stra 22.

So too want of necess.ries will cause a deviat.n but he must always go to the most convenient port. 1 Atk 545.

So also a deviation in order to join a convoy 2 Lal 445. Cow 801.

So too the Ins.rs were held liable, in a case where the deviation arose on account of the determinating of the Crew because they had ins.d ag.st the Correctness of the Crew. 2 Stra 1264.

Losses.

It is nec.ry to consider each loss by itself.

Loses } Loses are either Partial or Total. A Total Loss means not only an entire loss, but a loss that is so great as to frustrate the voyage, or so great that what is saved is less than the value of the freight, is a total loss. Provided the Ins.rs make an abandonmt. In all cases where the Ins.rs have a right to abandon & do abandon the vessel, it is a total loss as where she is in great danger & the Ins.rs call upon the Ins.rs to take care of her & they refuse do it, in this case the Ins.rs may abandon her & go for a total loss.

Whenever the danger is eminent & the insured call upon the Ins.rs to assist or they are informed of it & refuse not assist the Ins.rs may abandon but if they do not abandon & the vessel escapes the Ins.rs will be liable for all the expence of saving her. Thus where a ship going down ~~that was a ship~~ a river struck against a rock & the Ins.rs were informed of it, they must bear the expence of getting her off.

Every loss not Total is Partial. It is so called when the loss is sustained but the expences are incurred by the accident — these are borne by the Ins.rs

1st Losses by Perils of the sea; These are such losses as arise from Winds, Waves, tempests, rocks, striking on sunken rocks &c &c, they must however be the immediate or proximate

(a) But if we meet case the ship is lost the Ins.rs cannot recover the expence of saving it more than of the Ins.rs

Losses & proximate cause of the Loss.

The proximate cause is that which where there are two concurrent causes of the Loss is not the immediate cause, but if a vessel is lost in a storm on account of her not being seaworthy, the unseaworthiness is the cause & the Ins.rs are discharged

Where an Eng. vessel was driven on the coast of France, & was there captured, it was held to be a loss by capture & not by stress of weather or by the perils of the sea, for the capture was the proximate cause of the loss. Therefore the Insurers were not liable as they had not ins.d ag.st capture 2 Show. 322

Where it is necessary to throw goods overboard to lighten the vessel - it is a loss by the perils of the sea

Where there was an ins.n ag.st fire & the ship was taken by the French & burnt, the owners brot the action ag.st the ins.rs on the ground that the fire was the proximate cause of the loss - but the Ct considered the real cause in this case the capture & ergo dis.ed the Ins.rs as the prop.y was lost to all intents & purposes before the fire was set to her & vessel engaged in the Coasting trade was insured ag.st perils of the sea, and by contrary winds the voyage was lengthened out so that provisions grew scant & most all the slaves dies, the Ct held it not to be perils of the sea, for the want of provision was the prox.te cause of the loss. Questions of the kind have sometimes arisen in this country in regard to cattle transported to the W. Indies - & they have been decided the same way. 6 Cr. 656.

Lopes } A ship injured by worms in a warm climate was not considered as arising from the perils of the sea Esp 444.

So that where there are other causes besides the perils of the sea, the prox.te cause is gen.y looked upon as the cause of the loss.

No loss occasioned by in the ordin.y course of things is considered as a loss by the perils of the sea as the wear & tear of the ship, ergo Ins.r not liable. But when the loss is occasioned by the extraordinary violence of the wind or other unusual circumstance, it is within the policy. & the Ins.r is liable as, where by the violence of the wind an anchor or cable is lost. 1 Emerigon 393.

A recovery might be had on the ground of a presumption that the vessel was lost, in consequence of her long absence but the time must be so long that ergo one supposes her lost & Stra 1789. Park 83. Stra 1199.

2d Running-foul is another risk insured against under the touching & perils at the end of the policy "all other accidents" but not as if the loss is occasioned by the misconduct of Mast. & Crew. 1 Emii 413. 419

3d cap.t Fire, where the Ins.r is liable unless the loss is occasioned by the Mast. & Crew.

Loss by lightning is not a loss by fire, but by the perils of the sea, 1 Emii 414.

There are two remarkable cases concerning ins.r in one of which the Ins.rs were held liable in the other not.

Lopes } The first was when a repel came to Smyrna from Smyrna, when the plague was prevalent & the people burnt her. The Ins. held liable. —
The other was where the Capt in order to get into Manila stated facts false, for he said the plague was not on board, when in fact it was. in consequence of wh. the ship was burnt. — The Ins. was discharged because the loss was occasioned by the misconduct of the Mast. 1 Emergon 434.

4th Loss by Capture — This is diff. from detention. If the object is to make a prize it is a Capture, otherwise it is only a detention.
It is no subject of inquiry whether the capture was lawful or not, as between the Ins. & Ins.d
A Loss by Capture may be either total or partial
The Ins.d may abandon immediately on hearing of the capture, & this vests the prop. in the Ins.r in wh case the Ins.d may recover for a total loss.
But if the ship or cargo is recaptured before the Ins.d hear of the capt.n they can go only for a partial loss. unless the prop. said does not amount to the freight, or the voyage was frustrated by the Capt.n in wh case they may make an abandon.n for a total loss. so that it depends upon circumstances
In case where the Ins.d have no right to abandon the Ins.r must always pay the partial loss.
By a Recapture what otherwise might have been a total loss may be turned into a partial one
As to what the Recaptor get, nothing is to be

Lopez & to be learnt, for the most eminent writers differ. Mank. gives an epitome of their opinions. It seems by the Eng. Law the prop.ty is not changed ~~goes nothing~~ unless the recapture has been after the condemnation 2 Bur 695. 10 Mod 29. 1 T.R. 479. but the recaptor is entitled to salvage (a)

The Ins.rs are never alleged to abandon. In case of the abandon.t every thing that belongs to the vessel is abandoned also. Thus as in a case that happened during the Revolution, a small privateer was ins.d & sent upon a cruise. The Ins.d heard she was taken & abandoned her to the Ins.rs. a few days afterwards a remarkable fine prize aimed at Hy. wh had been taken by the privateer before her capture — the prize of course belonged to the Ins.rs.

The Ins.d are never bound to abandon the Ins.rs cannot compell the Ins.d in any case to abandon. Thus, a ship is aground & is got off with damage; the expence of getting her afloat is borne by the Ins.rs but they cant compell an abandonm.t.

When a ship is stranded the Ins.d may sell her if they think proper & recover from the Ins.rs as for a partial loss, provided the Ins.d make no efforts to lean them out at all hazards.

Where a sum of money has been paid by the Ins.d the voyage not being defeated, & there is no aband.t the Ins.rs liable for the money as for a partial loss.

So in the case of Ransom & Mills, the Ins.d may recover as for a partial loss 1 Dl 313.

The idea of liability in the Ins.rs in the case of cah.t proceeds on the ground that it is a total loss

(a) This case of recapture is a real instance of the recaptured vessel being a prize without the salvage, so may although prize the ship is any thing paid for it, & the salvage of the ship is for convenience sake

Lopes E. There cannot be a recovery on a Ransom Bill in time of War. In Eng. a recovery on such Bills is forbidden by St. but it is in affirmance of ye L.

Whether there ought be a recovery after the War seems to be a quest. There is a case in Doug. (Authors & Fisher) on this subject, but got along without deciding the point 8 Nov 1784. 1 W 563.

5th Loss by Detention

The words of the Policy extend to all arrests by any Kings, Princes or People. The Ins is liable if loss arises from this cause

Embargoes are arrests of this kind. Detentions may be at sea as well as in the ports of the Powers detaining them, where vessels are taken by belligerents at sea in order to prevent them from giving any information to the enemy. So too they are sometimes press'd to be used as transports, in wt case indeed they are usually paid by the Belligt. for their services. In all these cases however it is detention & if damage arises the Ins are liable.

The object of detent is not prize, but for various purposes. as examination &c &c.

When a ship is navigated contra to the orders of a foreign country, as where the Capt undertakes to run the goods, of himself, & the ship is seized it is neither capture or detention. but it is barratry & the Ins are not liable unless they have insured the barratry of the master. 2 Vern 176. If in this case the Mast. had the orders of his owner to run the goods there wd be no barratry, & the Ins wd be liable altho

Lopes & altho' they had ins.d ag.t Barney

Case in 4 Bro. P.C. 789. a repel went to the land in a time of scarcity & being full of corn the mas. seized & the crew, in order to make her sell the corn, & the quest. was, whether this detention was a detention within the meaning of the policy, being done by the "People" the Ed. it was not. & in the Ins.rs were decr.d.

Whether the detent.n was lawful or not is no subject of enquiry

When the detent.n is by Govern.t for Social purposes altho' not detent.n may be unlawful, still the Ins.rs are liable. 2 Ray 640. Sal 444

Where the repel was detained by Embargo for not a length of time as to prohibit the voyage it was held not a noxious or abandon.t. 2 Bur. 588. 588.

When repels are detained on account of a Det.r of War it is considered as a Capture & not a Detent.n

When there has been a War & Peace is made & repels are taken it is deemed a Detention & the Ins.rs are liable for loss arising from it. There is however generally a provision in the policy as to this matter. 2 Bur 1211. 2 Wm 1211.

The Danger of detentions is the risk of the voyage & the Ins.rs are liable whether the detent.n was lawful or unlawful provided it be done by Govern.t.

The clause by "Kings Princes & People" means a detention by the Magistracy of Govern.t. La Ray 640. 6 Bro 445.

Lopes C. 3 6th Lopes By Barratry. The Law on this subject has been changing its complexion for a long time. Some have said it did not be barratry if it was done for the benefit of the owners. but late decisions have however overturned this idea

Barratry is any wilful misconduct of the Mast'r or Crew with the intention to defraud the own^rs. This defin^n is not altogether correct for it may sometimes be barr^y when intended for the benefit of the owners. However when there is any misconduct to the detriment of the owners & where there is no reason to believe the owners commanded - it is Barr^y. — It always implies a breach of trust.

Some of the old cases mentioned in the Books as instances of Barr^y are such as deserting the ship, running away with her, embezzling of money &c

It is somewhat singular that the Ins^n Ch^d however bound ag^t of Barr^y of the Master inasmuch as he is ag^t of the Ins^d.

If the Barr^y is committed by command of the owners they cannot recover ag^t the Ins^r. 1 Atk 545. 2 L Raym 1349. 1 Br 330. & 90.

The Insurt. sometimes insures ag^t the barratry of the Mariners, tho' not ag^t his own barr^y. If the Mast^r of a ship is owner there can be no barr^y for nothing done by the by the owner or his orders can be barratry 2 Atk 1143. 1 Br 323.

It has been said that loss by unskillfulness or negl^t. did not be barr^y. 7 Br 505.

Lopes } But as to weight this has been doubted for the weight may be so great as to amt to a breach of trust

A Mutiny of the Seamen forcing the Mast to return to port was held not to be Cont. Bur 1264. Sha 1264. I suppose this would now be considered as the act of the Mariners

If the Master of a Lett. of Marq. carries when he is not allowed by the Policy only orders of the owners it is Cont. 6 R 879. In this case the Lett. of Marque had not the commission properly confirmed & of course a capture was not warranted by it.

Nothing done by the orders of the owners of the ship can be Cont., & of course there could be no recovery had by Insd. agt Insrs. 2 Lth 1173. 1 R 923.

Where the ship is chartered the consent of the owner does not prevent the act being Cont. for the person to whom she is chartered is pro hac vice considered as the owner Cow 148.

Case in 2 R complained of. The Capt was guilty of smuggling & the ship was seized, this was done by in the Mast. & the Ins. were called upon, who contended that the Policy was confined in its terms to lawful trade & that they did not ins. agt unlawful trade. The Ct determined that the trade ins. was the trade in wh the owners were engaged & that was a lawful trade - ergo as the trad ins. agt the Cont of the Ms. - Ins. halle 4 R 33. 3 id 279. & 219.

Lates } The act may be such as wd in itself subject the Ins^r. but the loss by loss^g happens after the policy had expired, (the act is done before, but the loss accrues afterwards), in wh case the Ins^r will be discharged. Thus, where the Ins^r. was for a time into time & the vessel arrived safe — the Mast. had been guilty of Cont^d by smuggling before the policy had expired, & after it had expired the ship was seized & condemned, — the Ins^r. were dis^d. & the Ct laid it down, that the Ins^r. goes to the end of the time, & that the Ins^r. are liable to the end of the time & no farther, altho the cause of the loss existed before the time had expired / 1 M 152. / This arises from him. of policy & convenience, for if the cause of loss happening just at the expiration of the policy, cd be sued for, it might be sued for at the expiration of third & thirteen years — wh wd create most diff^s.

In this country there have been several cases adjudged Cont^d. wh I have always that had. Thus in many cases American vessels being neutral & hav^g nothing but neutral prop^y. on board, have been taken by the British, & while going into port, have been rescued by our countrymen, (the news) but have been taken ag^n. by other British cruisers, carried into port & condemned on the ground of assisting the enemy. Upon this rescuing of the vessel & bars has been consid^d. Cont^d, & the Ins^r. have been allowed to come ag^t the Ins^r who ins^d ag^t Cont^d. This I do not approve of for it is evid^t. that the Mast. wd have been rewarded by the owners had he succeeded, & success in such cases

Lopes & such cases has always been attended with applause. — If the owners had been present they probably would have commanded it. I think that there is an implied command of the owners in such cases to exist; It is hard to make this Barr. but still it bears a strong resemblance to the attempt to get clear of duties it is lawfully — for if the Capt had actually run the goods without pay the duties & had escaped the owners would have applauded him — In both cases the Capt has acted in view to please the owners & no other advant. to himself than what results from this, however I think the Owners have no right to buy an act. ag.st of Acc. as for the Lost. of of Bract.

The old act. against there should be some fraud intended upon the owners in order to constitute Lost. Now it is well understood, that if of things done be a breach of trust, whether benefit was intended the owners or not it is Lost.

4th Loss by Gen.l average, whatever perish. is thrown overboard in order to save the ship, or if the Mast or cut away in order to save the ship, an average of the loss must be struck upon the owners & freighters, for not loss the Pass.rs are liable. So too the average is good when the loss was the cause of preserv.g the whole, as where the ship is ransomed from a Pirate for a certain sum, or in the case of com.n ransoms. So too where there have been

Losses. } Men & Beasts incurred by means of disputes, the ship or where she has been injuriously carried into port, & expenses have been incurred by going to law in all such case a genl average must be made. These losses are to be borne by the owners of the ship freight & cargo. 1 Ld Ch 83. Beawes 146.

Those who loose as well as those who do not loose are liable to the genl average & the Ins. are liable over to them.

Where the loss occasions a genl average, it is said it is to be settled by consultation among the officers, but I think say in genl there was not much of such consultation.

When the loss does not contribute to the preservation of the whole, the others have not to contribute to the average. In order to make a genl average the loss must contribute to the saving of the ship; therefore when a Pirate comes on board & demands barrels of flour & takes them off with out doing any other injury the loss is not the subject of a genl average. So when the goods of a Partr. in ind.t are lost or injured by an acci.t as by the break.g of the vessel, it is not a subject of a genl average.

When in avoiding an enemy they run into a harbour & finding they can conveniently land certain goods, they do so, after wd the enemy pursues & takes them, here this sha average should, for the salvage did not save the rest. Roccus 297.

Lopez.} The ship must be saved in order to make an average. If therefore goods are saved & ~~goods~~ the ship is lost, they are not subject to an average for they were not saved by the loss of the ship

Where in a storm a ship is preserved by throwing over part of the goods, but is lost in another & some of the goods are preserved, these are subject to an average; Suppose a vessel arrives at Commerce or out of shoals puts the goods in lighters, & the ~~goods~~ ship is saved but the ~~ship~~ goods in order — an average must here be ~~lost~~ made because the ship is saved by the loss of the goods. But if in this case the lighters had been saved & the ship lost there then will be no average, for the loss of the ship did not contribute to save the lighters, neither did the saving of the latter contribute to the loss of the ship Marsh 480, 456.

Where the ship is unjustly taken all the expenses arising from it is a subject of a gen'l average Beawes 150, 2 Str 476, pl. the expences of a ship driven into port for trial or to repair during the time of detention is a subj. of gen'l aver. Beawes 150. 2 Str 407. 1 East 220 Park 125.

Sea damage is not a subj. of aver. unless it coincide particularly to save the whole 1 East. 220.

In case the goods composing the cargo are to be disch. at two or three ports their value at the ports where they to be respectively disch. is that on wh the average is to be apport. On this case as the Cap't cannot determine how much each

Loses, each is to pay, until he arrives at the last port. he must take security from the owners or consignees of the goods landed at the other places for their share of the average

The method of estimating the genl average is this, The thing is taken up as if there had been no loss, & an enquiry is made of what the ship, cargo & freight are worth at the port of delivery then an enquiry is made into the loss & a proportion is taken to ascertain the damage on each individual according to his prop. wt was on board each individ.ls loss is to his individ.ls prop. as the whole loss is to the value of the whole prop. & the value at the place of delivery is the stand.d & the bottom may either support separate actn agt the diff.t parties for their separate share, or file a bill in eqy agt the whole & this settle it at once

Salvage.

This is a loss born by the underwriters. The word "Salvage" some times means what is saved & sometimes what is paid for saving, Here it means the latter. It is covered by the policy

The L Ms. give those persons who save the prop. a reward for their trouble, & a lien upon the prop. for this reward.

This privilege of having a lien, has very often induced them to deter the owners by demands an unreasonable reward. And in such cases where there is a dispute about the reward the Ct of Admty will determine what is reasonable

L Nag 393. 2 Lab 584. Bardw 304. Marsh 474.

Salvage } The manner of declaring for salvage is not to declare for loss by salvage, but to declare for loss by capture, shipwreck &c as the case may be, to the amount of the salvage. —

Abandonment

In certain cases the Ins.d have a right to aband.n as for a total loss — this depends upon the state & circumstances of the prop. Where the loss is total and entire there of course is nothing to aband.n but there are certain things wh entitle the Ins.d to consider the loss as total, when it literally is not so.

2. Bur, 693. — The Ins.d can never be compelled to abandon. The aband.n transfers the prop. as absolutely as a bill of sale. & when once made by the Ins.d

2 Emerig. 215 cannot be revoked, unless by consent of Ins.d.
2 Dr. 7.

The Ins.d may waive his right to abandon, but he cannot revoke an aband.n when once made. Bott 194.

If the Ins.d will not take the prop. on an aband.n & say the loss is the Ins.d may act as agt of the Ins.d & may sell the prop. & then come upon the Ins.d for the rest of the value of the prop ins.d in ye Policy. But the Ins.d must make a fair sale & may not purchase himself. 10 Johns 190. This case has been much misunderstood — It is a correct decision & is conforming to the gen principles of Law. The purchase of the prop. by the Owners was material in this case — the decision determines nothing

abandonment } determined nothing as to the right of aband.t that differs from the Law that is commonly laid down on the subject

In case of a total loss & aband.t whatever is saved over the value of the freight, goes to the Ins.rs

In case of a capture it is considered as a total loss & the Ins.rs may aband.n but if before the aband.t news of the recapt.e or recapt.e arrives then there is not of course a right to abandon — it will be a partial loss. But if by means of the recapt.e the voyage is frustrated, a recapt.e does not deprive the Ins.rs of the right to abandon. The great thing is when the voyage is frustrated. in such case the Ins.rs may abandon, the reason is not merely on acc.t of the capt.e but because the voyage cannot be pursued. 2 Burr 1198. 1 Bl. R 475.

The Capt may act at his discretion with the cargo, & if the Ins.rs abandon, the Ins.rs are bound by his acts. — But if the voyage be pursued notwithstanding the capt.e the Ins.rs on hear.g of this may not aband.n but must come upon the Ins.rs for the partial loss. — a partial cannot be turned into a total loss. But even in case the voyage be pursued if the goods saved are not of the value of the freight, it is a total loss.

In case of shipwreck, the Ins.rs (on goods) may aband.n immediately on hearing the news, but if the Capt save the goods & send them on the voyage in another ship, the Ins.rs a head of it may not abandon.

Abandonment, but must come upon the Ins. for a partial loss. 1 & Bur 683. 96. 1 Bl R 304. 3 Atk 195. / see must case of the rule in Bur 683. 3 Bl R 197.

The loss at the time of mak. the aband. must appear to be a total one or there is no right to abandon Bur 1189, Park 169.

On the recapt. the Capt must judge of the propriety of pursuing the voyage & his judgt is made with good faith, tho' erroneous is conclusive between the Ins. & Ins.

The Capt. in case the voyage cannot be pursued may sell the ship to pay salvage. & in a case of this kind where the Ins. wish'd to abandon. the Capt had a right to, for every Capt has this aut & all parties are bound by his conduct. If the ship is not aband. he may purchase it in for the Ins. Mills vs Platte Doug.

It often happens that great demand is made for salvage, as where the ship is upon the rocks & in imminent danger, in such case the Ins. may ~~cais~~ notify the Ins. & demand assistance & if the Ins. refuse, the Ins. may abandon, but if the Ins. say they will pay the expences, the Ins. cant aband.

Cases come even when the salvage to very high the Ins. may abandon tho the repel is saved. 2 Bur 683. 696.

The voyage may come to an end tho not frustrated as where the ship is injured & sold by the Capt — as he has a right to do. — now in this case it is not to be considered as to make the

Abandonment} the Ins.rs shall pay a total loss, unless the value of what is saved falls short of the freight 3 Atk 195. Stra 1065.

The same will hold where the right to abandon arises from detention.

In all cases of aband.t the premiums on board become again for the Ins.rs

In a case where a vessel sailed from Virginia on her voyage to Eng. was taken by a French Privateer, who was carrying her to Port, when she was retaken by a British Frig. who carried her to the very port, to wh. she was bound, the Ins.rs were not allowed to abandon because the voyage was not frustrated. 2 Burr 1189. 1198.

Where the ship was captured & purchased by the Capt. for the owners, & the voyage was performed, it was held only a partial loss, & the Ins.rs were not allowed to abandon for a total loss, for what was saved was worth more than the freight 1 Esp 199.

In case of a ship wreck, the loss is total altho the goods are saved for the voyage is frustrated.

Where a ship is stranded, if she gets off it is but a partial loss. 1 Ld in case of immediate peril the Ins.rs are informed of it & will not assist, the Ins.rs may abandon for a total loss. 1 Dr 187

There is not a total loss of a ship, unless she be entirely destroyed or will sell for nothing

Abandonment. The ship being incapacitated to pursue the voyage does not make a total loss. But in the case of goods the loss is total if the voyage is frustrated. as in the case of the Cotton ship the voyage was frust.d but the goods were saved. Park 116. 159.

Where there was an ins.ce for a limited time & in that time the ship rec.d damage & the Cotton sold her. it was held to be a partial loss. because what was saved was not less than the freight. Park 116.

When must abandon.t be made? Immediately on hearing of the loss, notice must be given to the Ins.rs within a reasonable time w.ch soon as it conveniently can be done, therefore in a case where there was a total loss, but the ship.r gave no notice to the Ins.rs, & the Capt. sold the wreck doing the best he could, & accord.g to d.ct of d.d Ins.rs sent the money to them, then they frd.t it less than they expected undertook to abandon but the Ct. did not allow it. Park 172.

In cases where they thus compromise to abandon they may come for a partial loss 1 Marsh 508.

A British ship wh was ins.d was taken, carried into a neutral port & condemned by a French consul, & being upon and the Ins.rs abandoned & came for a total loss — The captain clearly was a total loss, but then the Ins.rs were out of season. But they urged the claim on the ground of "and

When. Aband.n } "condemnation", The ans. to it
was, "condem.d" by a ct of incompetent jurisd.n"
The repurchase
Is the same as a ransom & comes in under a partial loss.
I have seen no case wh denied that there cd be a recovery on a ransom bill
after the War. - this case goes on the ground of its being
an illegal contract on wh there cd be no recovery - It goes
much farther than other cases, The Judge thinks such
contracts legal & cites.

If the Ins.rs by any fraud prevent the aband.n
wh otherwise wd have been made they are liable for a
total loss, no matter what time may have elapsed
before the aband.n made 2 BR 49 & 50 J.

There is no partic.r form an aband.n - it must
be explicit. Stev 92. Park 176.

When the Ins.d is a general one i.e. when a certain
sum is ins.d on ship & cargo in the lump. If it may
be no specified the Ins.d cannot aband.n for one & not
the other, that is they cant abandon for the ship & not
the cargo - they must aband.n for all or none. So in
case of a gross sum ins.d wh goods. part cant be ab-
and.d & the rest kept, But if a sto policy a cert-
ain sum is mentioned as ins.d upon the Ship, & a cert-
ain sum upon the cargo, the one may then be aban-
doned & not the other. & so it is when a certain sum
is insured upon each article, as mentioned in the
cito, it a Indigo. &c

The aband.t transfers the prop. to the Ins.rs in
the proportions of their several subscriptions

The cargo is not always aband.d tho' the Ins.d
is gen.l as suppose the valuations to be £5000. & the

Insurance is laid for £6000. In this case 3/4 of what is left is transfd to the Ins.rs. And the Ins.rs become tenants in com. with the Ins.rs for the rest. 2 Ermingon 213, 227. (w)

Adjustment of Loses.

Where the Los is total & the Policy is valued, the los is adjusted at once, the value in the Policy is the measure of recovery. If the los is total & the Policy is open, they must ascertain the los by enquiring how much less the value is than the prime cost & duties & premium by reason of the damage rec.d. If the los is part.l the rule is the same in both cases then can lend greater recov.y than for a part.l los.

If the thing lost is capable of valuat.n its prime cost is the rule

When the goods saved amount to more than the freight, the freight is subtracted from the salvage, the diff.ce between the residue & prime cost is the am.t of the los 2 Burr 1070. 1167. In this case you have nothing to do with the value of the goods at the port of delivr.y you have nothing to do with it as in the case of a gen.l average. The ship is valued at what she was worth at sail.g.

In case the goods saved are not damaged then the prime cost of what is lost is the am.t of the los.

In a val.d policy the rule is not the diff. between the sig.d value & the market price. as suppose hogshead of sugar valued at £30 each & the good sugar sells at 25. & the damaged at 10s. now it is not what the Ins.rs

adjustt of loss & this is how to pay. because y good sugar sold only for £25. — It undeniable y is was y sum to be paid, but this is not y case, the rule in y case is to enquire what proportn 5 bears to 25. — it is 1/5 then take 1/5 of 30. as the loss-out is 6. It makes no diffce whether you go to a rising or falling market, the rule is y same — Suppose the adjustn is at £30 but the goods if not damaged wd sell at £50. & they are sold at £40. the diffce then is 1/5 wt is 1/5 of 30. then 6 is y loss. — Suppose the good bro't £20. & if damaged 10. — the valuatn was 30. then y diffce being 1/2. the 1/2 of 30 - being 15. 15 is the loss

The Rule yn is y. find the diffce between the sum yt is bro't by y damaged & good prop. then enquire what proportion y diffce bears to the sum at wch y good prop sold, then of the proportion is as 1/5 1/8. 1/2 &c note that of y origl valuatn as y loss. 2 Bur 1167. Park 104. Esp 77. Marsh 541.

This adjustt is gen'l effected by certain gentlemen & when indorsed upon the policy as is usually done, it is prima facie evidence of a right to recover the amt therein agreed to, but y adjustt is not conclusive, it may be impeached. & when y parties cannot ultimately agree they must go into Ct. Beawes 308. 310. Park 118.

There was a case in C Dunford where y adjustt was signed by y parties, y Ct allowed them to try it because something was said at the time of signing that they were not satisfied

La Mesurier held that if there was a mistake either of law or of fact in makg y adjustmt he wd set it aside. Park 118. 2 Bur 1167. Marsh 141. Park 118. Gorrow & Goldcraft. Cas. Ma 186. Whitmarsh v. Walker Doug. -

Return of Premium

The Primer

ns of Ins^ce is entitled to his prem^m is the risk. If then the risk is not run the prem^m accord^g to Ord Prin^s must be returned. — the consid^n of the prem^m fails. 3 Bur 1304. 1864. 1909. 2 Ld 1008. Park 156.

Where part of the prop. shipped is lost, there was ins^n. the Policy not being a valid one, the prem. whole returned pro tanto. This occurs in those cases, when the goods are to be shipped in a foreign port & owner does not know how many there are.

But there are cases in wh the Ins^n runs no risk, & still is not obliged to return the prem^m as where Ins^ce is void from fraud or hostile Ins^n. A great many cases have been so decided on Ord Prin. I do not think it correct to say he runs no risk in such cases, for he is liable to be cheated unless he discovers fraud. Park 218. Bur. 1364. 2 Vern 216. 2 D. Wm. 270.

Where the Policy is void on act of fraud on part of the Ins^d the prem. is returned 3 Bur 1909.

There are cases in wh there is no risk in one sense & the prem. is not returned, as where the Ins^d is an illegal Cont^t from aim to both parties, for here the Law will not stop to assist either of the parties in his trial the Law. (c) East 95. Park 873.

Where risk is commenced, there is no return of prem. but if not commenced it is to be returned upon suff^t cause shewn. It makes no diff^ce from what cause the commencement may have arisen. as

(b) Pl^f & defendant entered into a policy on ship, goods & freight, at a certain rate, & the case of the shipping the merchandise, the defendant agreed to return the premium paid, the defendant refused to return the premium paid. Park 156.

as suppose she is to sail with convoy & she sails without one, here there is no risk for ye Ins: may treat the Ins^d as void. ergo he must return ye prem. (Cow 688.) But where the Ins^t is on an unlawful voyage, if the prem. be paid it cannot be recov^d back even if it be recd for life the risk is comme^d. 3 DR 66. sents

Where the Policy is void on acct of non compliance 2 B & P 330.
with a warranty — prem. returd — consid^n failed.

Where the risk had actually commenced, as the ship had sailed, but returned on acct of some diff^s & the voyage is given up. prem. not returned. & this because there is no ground for apportionm^t for you cant ascertain precisely what risk was run. Ld no Woodridge Long.

There are cases however in wh the risk has actually begun & yet there must be a return of the prem. as 1st where this arises from a contr between the part^s this where there was an Ins^d from Ld London to Barbadoes at 10 per ct. & back agt at 12. if the risk is lost on the outwd bound voyage the Ins^r may keep 10 per ct but must return the 12. If the Policy had been 22 per ct to Barbadoes & back agt. there wd have been no apportionm^t or return of prem.

2 Where by usage the Lord has considerd it as two voyages as in all cases of warranty to sail with convoy. for there is a risk on the voyage to ye place of rendez^s. Now in most case of when she comes to ye place of rendez^s she does not depart with convoy according^s to ye gen^l pain. there must be a return of ye

Return of Premium } the whole prem. of the voyage of Hale did not look upon it as two voyages & therefore for a small proportion of ye prem. to be returned 3 Burr. 1232. 7. 1884 176. Marsh 556 p. 570.

I suppose the Ins. to be for a limited time as for 12 months & the repeals captured in two — now it is evidt. and will be seen for the remaining 10 Mo. until there is no return of prem. Cowd 866. Marsh 566 Ramon vs Woodbridge Doug. - Park -

There is sometimes a cont. entered into, that if ye ship sails with in coming, or within a given time there shd be a return of a part of the prem. wt has been agreed on. Now if the fulfills her engagt. & there is a partial loss ye Ins. must pay the Partial loss & the part of the prem. / Simmonds vs Cazelli Doug. 389 & 422 / in this case the was capt. & recapt. & Ins. had to pay the damage & return of prem. / 1 Bl. 351

It is a rule of ye C. L. Mo. that in all cases where prem. is to be returned, the Ins. may keep it back except where they are themselves in fault, as when the Ins. moved the cont. was illegal — Money paid on an illegal cont. may not be recovd back even if executory, the governing principle here is that these conts are in ye nature of wager & policies. Lowry vs Bourdieu Doug. Park 476.

In a case where after ye unlawful voyage had been performed, the Ins. got an order to come back ye prem. because no risk had been run — the policy being void from ye illegality — Ld Mansfield & another Judge maintained there cd be no recovery because they were "par delicto"

Return of Premium. Buller was of the same opinion but he went upon the ground established in the case of Chapman v Walker, & said that had been contributed therefore there could be no recovery. But if the risk had only been executory, there might have been a recovery. But of that last point I do not approve, for the consequences would be pernicious, thus, when money has been paid to a man for our goods, (which is contra to law) if there might be a recovery of the money as long as the thing is to be done was executory, it would be a great temptation to the person employed to violate as soon as possible the laws of his country, in order to prevent the recovery. Mansf. 7 Term Reps. 481 was decided in Eng. & there could not be money whether it contract was executory or not. MR. 1 Oct 96.

If an Prem. has been paid on an Ins. to protect & trade of a enemy it could not be recovered.

If the Ins. has been guilty of fraud the prem. need not be returned. 18 Dec 1919. This indeed is a great grievance. The argument is that a second risk has been run & prem. not be returned, or it would be making the Ins. pay a penalty to a private person, because of his error or mal feasance — But is this any thing more than is done by fraud to every day. 2 Term 206. 2 Ch. R. 170. 3 Burr 1364. Park 186. this last case is well founded.

Bottomry & Respondentia Bonds.

A Bottomry Bond is when money is wanted & money is borrowed & the ship is pledged as a security, & it is agreed that if she is lost, the lender loses his money. but if

Bottomry & Respondentia Bond } if the arrives in safety then the Lender is to receive a certain interest; not the three 3 usury. The marine interest is usually 40 p.c. the person of the Debtor is here also liable on the return of the ship & 1 Bl 456.

In a Respondentia Bond the goods only are pledged & not the ship, if the goods are lost, the debt is gone; if they arrive the debt continues, but as the goods are to be sold the responsibility lies chiefly on the borrower.

These bonds of both kind are in usual interest they are in the nature of an Ins. themselves, for if there is no risk run the Lender has no marine interest

From the end of the risk there is an end of the marine interest & from that time the Lend^r is entitled only to 3 P.C. interest. the marine interest is in the nature of a prem. for the risk run — it never is usury. Wad 414. Bac 3 246. Marsh 549. 1 Vern 163.

The Lender is entitled to a lien upon the ship for the security of his money as well as upon the person of the borrower.

By the marine law the Mast. may always hypothecate the ship in a foreign country & the bond given by the Mas binds both him & the owners.

The money must appear to be lent & use of the ship Hale R. Malloy B. 2. Ch. 2. 3 Marsh 589.

These Bonds must be things of real interest, for if they are of no int. they are but wager & void.

There is a case in 2 Vern 262 & 6 in it it was contended that on a voyage was abandon^d there ought to be a recovery of marine interest, because there was a event to finish the voyage — but it held contra.

(3) Both cannot be hypothecated the ship, or cargo the owners are absent — Debtor & hypothecator is for other claims there for the use of the ship as repairs or supplies, it and cargo and the

Bott^y & Respond^t Bonds } The Perils to wh lend^r or Bott^y lends are liable are the same qu^d as in ins^n but it must be a total loss in order to discharge d borrower. Mont 652.

The Lend^r is not liable as the Ins^r is, for the Ins^r cannot recover if the vessel is unseaworthy, but the Lender can. Neither is d Lender liable for loss by smuggling, 1 Emer 509.

If the vessel deviate the lender is free from the risk & is entitled to his bond. Skin 152. Eq. ca 372.

Change^g d ship without much^s discharges d lender from d risk.

The risk continues from d sail^g until d vessel cast anchor. And a loss to disch^g d borrower may happen during the time of d risk, as in case of Ins^n — Without qu^n to the Lenders right to salvage there seems to be a diff of opin^n Por 243. 423.

Whatever may the perils to wh d lend^r is liable the Borrower is disch^d by nothing short of a tot^l loss — the obligation remains however the goods may be damaged by the perils of d sea, nor is there any deduction or act of mere damage, for the lender is not bound to contribute to simple or any partial damage unless by express agreement. Ins^r the risk of lender or bott^y is in a little situation of d Ins^n. A capture to have the effect of disch^g d Borrower must be not a taking & detention as and amt to a total loss in a case of Ins^n a mere temporary detention will not discharge the Borrower unless the voyage be thereby lost. Mont 632.

Bottomry & Resp.ty Bonds } By the gen.l Law of Merch.ts & Lend.s is liable to gen.l average, but there is a diff.ce between bottomry, & an ins.n unless the stipulation be free from part.r average, is liable to it, whereas a lend.r is not liable to the charge unless by express stipulat.n but he is liable to part.r av. to a gth or gen.l average to disch.e the borrower. The allow of this diff.ce of the particular average contributes in no degree to the safety of the ship, whereas it is to those sacrifices wh are the subject of gen.l average that the lender owes the preservation of his money. Marsh 655.

Proceedings in cases of Insurance

In all or all counties trials in cases of Ins.e (& of Bills of Exchange) have been governed by the same law as carried on in the Ct of Adm.ty. In Eng.d & Scotland the proceed.s in these cases are governed by rules of the C.L. as carried on in the Cts of Equity. Thus a party may be compelled to execute his trust in their own as in other in Ch.. The trials however are in the Cts of Ld 1 Atk 457. 2 ib 359. 7 Bro P.C. 525.

It is not incom.t to submit ins.e cases to arbitrators, Under such an agreem.t in a policy it has been a quest. whether the Cts of Ld are ousted of their juris.n in which persons after submission to Arbit.n are precluded from going to Lawd. by agreem.t but no sentence being made. The quest however has been decided in the negative 2 Bro 504. 1 Wils 129.

That a a Policy subscribed by private individ.s is an act of aff.

Proceed^ds} The Def^t commonly writes the Policy & pr^ovides that it was "made accord^g to the custom of Merch^ts" — this however is unnecess^y. If then state the Ex^ch^ge, the Shep^d warranties, &c. & comm^d & that Pl^ff insured he paid much, & Pl^ff interest to the amt of what it is, & that this said on the voyage, by the time & with convoy &c as the case may be, then the loss & the peril by wh the loss happened, the notice of the loss & demand & lastly the breach or nonperf^ce, and a good Def^t must state all these, & if it states all the substantially it will be suff^t, & if it states not the true ground of the loss it will not allow a recovery, 1 Bl. 304, 4 Ib. 2 Bl. 3. Park 64. Implied warr^ts need not be stated.

If there has been a adjustment of the loss it throws every thing on the Def^t & the nonperf^ce & admits all the rest. — the ment^n as to interest may be gen^l & is usually the case.

If the Policy was effected by means of an agt the Def^t may be filed in his name, & in such case the policy stands to have been accomplished by him, but however must be as the interest to be in the Principal, it is suff^t to state that the interest was in the person in whom it was at the time of making the Policy 2 B & P 155. 12 East 461.

When one Part^r insures, the avermt of interest may be in his name, or in the words where he was one of the owners jointly interested it is suff^t to aver that he was interested 2 Dx 240.

Proceed^s} The loss must be attributed to its true cause in its immediate cause, or otherwise the fact will not support the Def^t. 4 B. & Ald. 1 Stra 581. 5 H 304 Park 62

Altho' it is sufficient to state the cause of the loss in substance yet it is always better to state in the very terms under the Policy 2 L Ray 1343 1 Stra 581.

Money paid for salvage is laid as a loss by the same rule as expenditure necessary & it is not laid as loss by salvage, but this is given in evidence Bland 204.

If the must is only to recover a Premium the Act or only for money had & rec^d is sufficient.

The gen^l issue to a Demurrer to the cons^n plea of Pltff is a surrender or allow to prove every fact the Def^t shews whatever will discl^e him and then was paid no intent. this not necessarily be & these may be given in evidence under the gen^l issue of "non assp^t", So he may shew that the vessel did not sail at the time agreed upon or she did not sail with convoy, that the Prop^y was not neutral, or if neutral had forfeited her neutality or a deviation — in fact any thing may be given in evidence at where there is no right of recovery.

When the Def^t knows there is something due & there is a dispute as to the amt he may plead tender as to that amt & non assp^t as to the rest. Pltff may deny the tend^r, or admit the tender & join issue on the remainder, Def^t may get

Proceed. Plea } gov permission to bring of money in-
to Ct.

When Pay is not by an Alien Enemy. The made
of Pleads. depends upon the legality of the cont. & a
plea in abatt. is a proper plea if the contracts
made at a time of peace, & if made at
a time of War the judgment may be plead & the
circumstances given in evidence 6 ER 35.
On the Jury may find a special verdict — & then
a sequent in law cases. — They are generally drawn
up by the counsel & found by the Jury.

When there are numbers of indentures
form & matter of transaction there ought be as
many as needful as there are indentures.
This was found inconvenient & gave rise to
the consolidating rule — The former practice in
such cases was to apply in Ct for an injunc-
tion, but now if Pts of Ct will make a rule
to consolidate the suits in. If the parties cont.
& the Defts agree to abide by one decision, then
no other suit shall be tried besides the one. &
the decision of the one shall be final. The Ct in such
case will compell the Pltff to suspend all his ac-
tions but one & ye put the Deft under condition. If
the Pltff will not consent they compell him by
holding of the cause by injunction. The Ct
will not allow a Deft to bring a writ of Error
& will compell him to bring all papers into Ct
as into Ch, & the same with Deft until they
consent. If any breach is made of the rule the

Proceed^g by the Att^y is liable to an attachment.

Proof

Rules with regard to testimony are the same in Ins^n as in other cases.

The contract is to be proved. If the Policy is proved to be subscribed as stated in the Dec^n it is conclusive evidence of a contract. If denied the subscription must be proved

Parol proof is not admissable to vary the import of the Policy or to contradict it in the least. Witnesses however may be examined to prove an usage as explanatory of a clause in the Policy but their opin^n as to the meaning of the clauses not admissable. On doubtful quest^n as to the rain of merits the Ct will in much to spare the assured. Lyons vs Bridge Day. Shin 454.

Where Policies are effected by agents their authority as well as subscription must be proved by producing their hand writing, & the aff. by the law of Att^y & of the Power got at it proved aff. This aff. is sometimes allowed to be proved by a mere practice of obtaining Policies for Principal 1 Esp R 61. — The Ct act liberal a & subject

The consid^n of the Premium & the fact of it must also be proved, the fact is proved by the receipt and Policy, but as also before this is not conclusive proof in all cases. Det cant be used as a g Ins^n.

The Ins^d must have an interest, an interest is when in a society of avoy or by Policy

Proof — Bills of Lading Sale. Invoices of Lading
acts of ownership &c &c 1 Esp N.P. 373. 2 09. 2 Stra
1127. or 1247 Ins & gent act of interest Pltff may
state any insurable interest & money will
be accounted & proof produced

On a Policy of goods, lost & respond. lands, can
not be given in evid.; for these are not insurable
goods & still in & East India trade where the usage
is diff.; for usage may always be given in evid.
8 Burr 1894. 4 Dt. 1 Bl 423.

Pltff must prove compliance with express war-
ranties, be they as in & nature of cond. prec.
& as essential to a recovery by & Ins. on & Policy

The gen. rule of neutral prop. is suff., but Deft
may prove & want of neutrality by certificate
from & Ch of Adm. & stand a condem. (a)

Pltff then proves the loss as set out in & Decl.
& must be proved as there set out — The time &
place at which happened may must also be proved.
If the loss was by capture, capture must be
proved & to have happened during & continuance of
& risk.

And if the Ins. is on goods they must be proved
to have been shipped & the Bill of Lading is proof of it.
The loss is usually proved by & Master & Crew & other
The Capt. proves no evid. which & Capt & Crew
are living. It may however be used to contradict
what they say or & Capt & Pilot & only use to wh it
may be applied 7 Dr 158.

Where the loss is by Capture. Perils of & sea
and be shown &c.

(a) Proof of the flag with the ship & papers, shows the ship & property to be neutral

Damages to be Recovered.

To ascertain this exactly is sometimes a matter of considerable diffy.

The rule is immediate damage are to be recovered but remote are not. The damage must be such as occurs immediately on the damage accident. Thus, in a case where African slaves mutinied & the Crew in self-defence killed many of them, others drowned themselves, others drank salt water & so put an end to themselves others jumped overboard, in this case in calculating the damage, it was held that immediate damage was the loss of those only who were killed by the Crew. 1 Sir 19 Com. Park 55.56.

When a ship is obliged to go into port to repair the expenses are said to be remote & do not come in under the Policy on the ship, but the seamens wages & the provisions consumed by detention, come in under the Policy upon the freight & not on the ship. Provisions & bunker during an embargo are not within the Policy Park 52. 54 & 55. 125.6.

If the provisions are taken out of the ship & then burnt, it is not within the Policy 1 Sir 205. 1 Ch 129. Park 20.

It is difficult sometimes to discern the true line between immediate & remote damage. Under the head of "goods, wares & merchandise" there are certain things not can be stored unless they have been particularized, as Captains Cloths & goods carried to the Dock. Park 20.

On a Deva for a total loss there may be a recovery for a partial loss 2 Burr 904. 1 Bl 198.

If one of several owners of a ship, insure the freight generally, he may under that policy recover his own share — for the property is several. Marsh 630.—

If the lessee for the whole value of a thing totally lost, when he is interested in but a part, he may in that action recover that part alone. Marsh 628.

Supplement.

Proof, One of several underwriters is a competent witness in an action bot. any of the other underwriters. In the first case that arose he was rejected on the ground of interest. It has since been decided that mere interest in the question does not render him incompetent to have that effect. He must be interested in the event of that suit. 3 T.R. 27, 33, 35. Wardw 360.

In case of a partial loss the amount of salvage paid may be given in evidence to shew the amount of that loss. Wardw 304.—

Fire Insurance.

An Insurance without interest is void by the Eng. St. & also by the E.S. An Ins.ce agt. fire when the Ins.d has no interest is similar to a marine wagering Ins.ce - they are not considered as wagers as wagers are enforced by the Eng. law. - La Hardwicke held that no wagering ins.ce could be valid (2 Atk 554) being as he thought a contract agt. sound policy - but there being a diff.t of opinion the St was made in affirmance of the law. - So whether we have a similar St in this country or not, the same law prevails.

On Ins.ce agt. fire no man shall recover more than his loss. To effect this the offices of Ins.ce usually insure but about ~~one~~ two thirds or three quarters of the value of the thing ins.d - thereby causing the Ins.d to retain suff.t interest in the property to render him careful, But it is common to get ins.ce at two offices & thus cover the whole property, - but in this case if there is an ins.ce over the value of the property it avails nothing for Ins.d recovers no more than his loss. - Yet to this the diff.t offices contribute in proportion to the sum ins.d by them.

Trustees & others having an ~~legal title~~ may insure as may also the cestuy que trust who holds the equitable interest.

The nature of the interest ins.d must be specified this, that no more than the actual loss may be recovered

Fire, Ins.ce } In all Eng policies is inserted the expression "that they (Ins.rs) are not to be held liable for losses by the invasion of enemies or usurped power." On this the quest.n arose. What is "usurped power"? It was decided to mean a civil commotion or organised opposition to government which amounts to high treason. So the loss having been occasioned by a mob, the Ins.rs were held liable. 2 Wils 363.

The expression "civil commotion" was then added to avoid liability for losses by mobs. – but the nature of the civil commotion was not pointed out by the policy. – The case was a loss by a mob whose actuaille object was the destruction of the Roman Catholics – but from their conduct, their object appeared to be more gen.l – The case was left to the jury upon the question whether the object of the mob was gen.l or special particular mischief – verdict for defts. – Marsh 588. Park.

If the ins.d dies the Ins.d passes to his representatives. But he cannot assign it without the consent of the office – this is because the contract is partaty fiduciary – as one man is more careful than another – it is allowed to pass to Ins.d representatives, to prevent that loss to the Ins.d wh might otherwise happen. 5 T.R. 685. 5 Bur. Parl. Cas 497.

Insurance on Lives.

Insurances are made on Lives, in consideration of the premium paid, to pay a gross sum or an annuity to the Ins.d in case of the death of the life man within the time limited, — A case occurred in the time of the Revolution, — an Officer of the Army insured his life for a given time to secure an annuity to his family in the event of his death within that time, — he continued in good health, & lived the the day before that on which the policy expired — & then he got drowned — — The office at Middletown is now paying the annuity.

Here as in other cases the Ins.d must have an interest in the life of the insured — as the life man must owe him a debt &c. —

In these cases a statement of the health of the person whose life is ins.d must be made & this statement amounts to a warranty, — but the omission of a complaint not immediately dangerous to life — will not vacate the policy

The loss in these cases must from the nature of things always be total. —

Partnership

Each Partner may bind the firm; as A & B enter into Compt. under the firm of A & Co. how extensive soever business they transact as to the business of the firm one part may bind the other. But if A being a firm of Land & give the note of the firm, it will not bind the firm, how the part. is prima facie evid. of the right of A to bind the firm, but it is only prima facie evid. & B may rebut it, & as by showing that the vendor was knew the land was for A alone

But the Compt. were in the habit of buyg horses, & bot a horse for his own private use, now this the vendor was not obliged to know, & the firm is bound & that the rule seems to be, that if the article purchased was one in wt the Co. were trad. it bind the firm, but not otherwise, It depends upon the science of the vendor. — as to their custom & usage of their trade, & as to the fact of the article being bo. for the private use of the partner, or for the compt.

It is often very difficult to ascertain the fact of science in the vendor. —

A Court is entitled into G. Order to pay B. for doing an illegal act, & how here this money comes to be recovered of the Co. but one of the partn. pays it there & he pays it without the knowledge & consent & privity of the other, he cannot recover the moiety of his partner, — tho' if he has such consent, knowledge or privity of his part. — he may recover — doubt. recov if not. —

Partnership. A silent partner is liable for the partnership accounts, altho his name does not appear in the firm / Doug 255, 291. 3 Pick 462. / and of a / 1 Bing 272. 8 C & P 696. / Man suffers his name to be in the firm without the expectation of receiving any part of the profits, still he is liable — for his name tends to give the comp.ⁿ credit. —

March.ⁿ in company are always considd by L.ᵐ as tenⁿ in comⁿ. Men this differs from all other joint properties of brothers by the E.L. they there being considd as joint tenants. — & so the jus accrescendi prevails, but this by the laws of the State generally is abolished; tho this right does not prevail as to March.ⁿ being but tenants in comⁿ & not joint tenants. (b)

The death of one of the partners dissolves the partnership, & the surviving shareholder, the property vests in the Exec.ⁿ of deceased. — & this Ex.ᵒ may sue money due to the partnership, sell the goods in his hands, divide all the rights not arising in ex are in B the Ex. except, that the right of being sued (c) survives to the survivor in the first place. & they cannot join in the suit — this is more a technical difficulty, there is no form of writ by wh they can be joined sued.

(a) As the jus accrescendi is unknown to the L.ᵐ there words wh by the E.L. would create a joint tenancy, mean by the L.ᵐ but a tenⁿ in comⁿ.

(c) The Survivor collects all the debts, as he alone can sue for. —

Again the Exr is not liable for costs. The Exr as a consequence of the will (c) is obliged to deliver to the Seniors all the Books & papers of the deceased as regard the partnership 1 Sal 444. - The time once was when the Exrs might have been joined 3 Bl 432. 435. 1 Show 183 & 188. 190.

In case of the partrs all being alive & the Comp living accts. the Creors proceed & all the private papers of the partrs is liable for the Co's debts. & the Endrs may choose as to the proceed he will bring on, but it cannot be sued for B's debt or B for Co's. but both may be sued for the Comp debts but it must be joint.

In case of Dissolution of one of the partrs as Co is insolvent in his private capacity - but his partner B is not so. Now a Creor of Co. lies upon the proceeds of the Comp to Co's debts - Now the proceeds have been diff. Co. Was for the a amt of partrs to double the amount of the debt & sell the whole & pay half the avails to B. - but this is disused, by liable to the objection that the property of B is sold without his consent he not being a debtor & he may be a loser by it.

2d A more com mode, is to sell one undivided moiety of the article, here no legal objection can be made, but this constitutes the purchaser, an owner in com as to the article with B. & this is

selling just as above - But this is liable to the objection that the sale is injured by the circumstance of the retaining the share

2d & Next mode is when it can be done, is to buy the or double the debt & setting off the half to B. this can be done in cases of bonds of borrowing lessen upon. but not when a store of goods is taken by the creditor, or a coat patent &c

One of the partners is mal-insolvent - & not merely as to his private property, then the partnership becomes dissolved - & A & B the partners, some or both are insolvent then the Ptnrs property is applied to pay the partnership debts. - & the debts were - two 2000 & the partnership property is exhausted. - If 1000 debts remain then we proceed to see what is the value of the Ptnrs & who debts, we find that it amounts 1000 & the debts are 500. - apply the Ptnrs property to the payment of accounts & the rest to the partnership debts then 1500 partnership debts are paid, B is owed 1500 & his debts are $1000. first pay his debts with his private property & apply the surplus to the partnership debts. - in this case then by the addition of 500 we find that the partnership is solvent.

The Rule here is to apply the Partnership property to the payment of Partnership debts & private property to the payment of private debts. - & then if there is a surplus of private property after the payment of private debts, it goes to pay the company debts. -

Illustration B owed $1000. & had but 500. his creditor never lost 50 of 100 cents dollar. Part

But then A has paid $500 more than B, then to B: 200
B owes him 1/2 of that surplus.

Eng: Bill's worth
2000 - debts 1000 - it is not worth then. A
Priv: prop: is worth $1000. A his debts amt
to $1500. - Share here of his private property
then is 500 in Court. B's priv: prop is
1000 he owes 2000. - Now here the 2000 Comp:
prop's surplus is to be divided between A & B.
now by this A secured 500 from the Comp:
prop's pays his debts. & B is enabled to pay
45/- in the dollar - Bennes - Ch. Partner.

Eng: there is no insolvency as to the estate of deceased
partner. but the Survivor proves insolvent. A has
his exer in hand, the Exr of A is able to pay
& he is liable as the estate of B will not pay it
- the proceed: in this case are in Ch:, (c) in Eng:
In Com. we do it by an act: at law, & have
found no inconvenience arise from it, Co Lit 184
1 Show 169. 2 Vez 265.

The com: difficulties of partners
is, those who are to share in each other profits
& losses: but by the decision 1 Ld Ray 582. 2 Salk
247 it is held that if they share in profits
they shall in losses.

(c) A bill is filed founded on the judg: obtained ag: the
survivor stating it to be ineffectual, & pray: relief ag: the
the Exr.

If one of the Part.s gets more profits in his hands than he is entitled to, the old remedy was by an act.n of account. But now resort is usually had to Ch.y as then the parties may be compelled to bring in the papers. - The appeal to the conscience is no argument in this case, as that may be made in the act.n of acc.t. It is said indeb. assumpsit (a) will lie. Probably it will, but the difficulty arises from the want of proof. If it is on this ground appeal is had to Chancery - 2 Ch.R 478. Wms 228. 1 Bac 16. 3 Ch 381. 2. 437. 449

On the dissolution of a Part.p notice ought to be given of it, otherwise they might be bound by subsequent contracts improperly made - But questions as to the notice & what is suff.t often arise - It must be made by the public vehicles of information, as News Papers, publication at the places of doing business - Length of time is often suff.t ground to raise the presumption of universal science as to the fact. - Case of Ram. Adm.r the paper in wh the dissolution was published, held suff.t - 1 Salk 292. Bl. R. 993. Coup 449.

But the Part.s who settles the estate, cannot bind the Comp.y by any new contract. - This has been often litigated. But decided, it does not bind the company out of this arises another question if was authorized to settle the Co. accounts. If gave an allog.e in the name of the Comp.y he pays it up. Qu. Can he now recover the proportion of the other partners. — 14 Pet 45. -

(a) Indeb. assumpsit certainly would lie to recover the debt in case it had been settled by the parties how much was due

A contracts a debt with C. who had never heard of any partnership between A & B. nor at the time existed. the contracts were for the Part.ship & it is decided that the Ds are liable - altho (4 BR 705) C never trusted at all to the credit of the D. (4 BR 747. 1 Atk 45. & 48) as a dist. from the circumstances

Factorage.

A Factor is a person employed by a Merch.t in a foreign country; he acts under a commission either gen.l or special - A gen.l commission gives him a power to buy & sell on credit & he is liable only for gross negligence 1 Bulstr 103. - Yelv 202.

A Commission to "sell & dis. pose" gives no power to sell on credit (Molloy 493.) "to sell & dispose" (2 Mod 100.) "as your own" does. (12 Mod 144.)

A. is a Factor to B & C. seperate merch.s abroad. on a gen.l commission from each he sells on credit & becomes bankrupt. now by the L.M. the money in the hands of the Factor must be divided between them, in proport.n to the amount of sales -

The Factor is accountable for fidelity and honesty. 2 Lil Ab 5 Ed. Molloy 495.

The Factor must pay the duties. it is not unusual for them to run the goods & then charge the duties - they can recover them - Bac. J. 265. Bac. Fact. for no injustice is done to merch.s as he expects to pay the duties & had the goods been lost, the Factor wd have been liable for them.

The Factor can bind the Prin. in all cases, even tho' he had no auth. to sell — for the vendee knows not wd may be the Princ. or what are his orders. (2 Ven 535)
The sale is good even tho' he transcends his commission
2 Ven 535. The sal of
When a Factor is known to be such the Prin. may notify the debtors not to pay the Factor. if after they do pay to him they will be obliged to pay agn. — but this is when he is known to be a factor Coup 253. Stra 1153.

The Factors has a lien upon the goods in their hands for their commission and balance of account Bac. 489.

If the Factor finds that of the prop. is not sold it will be best as they are perishable. It he can't get ready money, but on sell or credit — he is justifiable in so doing tho his commission will not support him. re contra 2 Mod 100.

If he purchases at a greater price than he was ordered to give, & the Prin accepts of them, the Princ. becomes liable. (1 Vez 509.) where the Prin. sold the goods & then came on the Factor &c

The Factor sold his own & his Princ. goods to the same man on credit, & the debtor fails — then all that is recov. goes to the Princ. untill his debt is paid — principle of policy.

If the Factor is directed to insure, & he does not as is common. he is entitled to the premium, & is liable for the loss. the remedy is by an action of trover agst him for the Pol. 2 Vez 79.

The Factor dies — now if the proof of the Prin. can be identified it belongs to the Prin., as goods or money in a bag. /1 Salk 160./ But if it cannot be identified, as the money is with other money then the estate of the Factor is charged to the amount of the Principals debt.

Tho a sale made by a Factor binds his Prin.l still he cannot deal with the property in all respects as his own — He cannot pledge it for his private debt. — this is going on the ground that he is known to be a Factor, if he is not known to be a Factor the pledge will be good. Stra 1178. 6 East 41.

If goods are pledged by a Factor, the Prin.l may recover them of the pawnee in an act.n of trover. & without tender of the ballance of accounts between him & the Factor. — the tortious act of the Factor destroys his lien. Selw. N.P. 826. 9m. 5 BR 604. 7 East 5. 4 Sc

If the Factor exceeds his commission either in buying or selling — he forfeits his wages. by the L.M. — this is a singular law. —

By the C.L. as soon as a bargain is made the property becomes vested in the bargainee & the Creditor has no more power to retain the property or stop them in transitu than if he had never owned them. But by the L.M. the cred.r may retain them or stop them in transitu if he finds that the debtor has already or is soon about to become a bankrupt. but if they have arrived at the place of destination or have been assigned to a bona fide purchaser, they

they cannot be indemnified.

If at an Auction, goods are put up by the auctioneer at a certain price, & the highest bidder does not bid up to that price, it has been much disputed whether that highest bidder is entitled to the goods.. it was held that he is. Cowp. 385.[a]

The auctioneer acts for other people but the contract is always in his own name the action it ought may be brt agt him or it may be brt agt the Prin.

(a) The principal is bound upon the sale the good must be sold if set up. –

Seamen's Wages.

It has been made a question in one case in Eng whether the owner was not liable for the deviation of Master &c (Doe. Eng. 224.) held he was not liable

With respect to Mariners the rule laid down by the laws of Oleron wh are adopted by all Mercantile Nations, If the Mariner is quarrelsome he may be put down among any civilized people on foot of half his wages, but he forfeits all his profits on board.–

If he uses weapons in his quarrel he may be imprisoned & brt home to trial & he forfeits all his wages.

If he uses to take command of the ship or conspires to do it he is punishable as a pirate[a] 53

Piracy is capital offence. If pirates are usually tried by the Admy. Ct without jury in Eng not so in this country.

The Mariners are obliged to remain with the ship until she is unloaded & dismantled on penalty of forfeiture of their wages — and if there are no carriers at the port of discharge they must hire that capacity. But then they are paid for it. 2 Dom 275.

They are entitled to their wages at the port of delivery. & thus tho' they make agem't to the contrary this is on the ground of their improvident & careless character — If the ship is lost going out. they loose their wages, provided not enough is saved to pay them (c) This is on a principle of Policy 1 Lid 179. 2 Dom 278.

It has been contended that the Sailors are entitled to their wages at the 1st port they arrive at. But it is not so. 8 Bur 1884. — it must be the port of delivery.

In all cases where the Mariner will not assist to save the ship he loses his wages. as he does also if he absents himself so as to detain the ship at the time she is to sail.

(c) If the ship arrives out but is not got home agn the Seamen are entitled to their wages. — 1 Lid 179.

(a) But when a storm was raging & there was great danger of the ship's being lost if the voyage was continued, & the crew took command of the ship & ran into port — on a Libel for mutiny they were acquitted —

No 5

The Law of Charter Party

The Contr. call'd a Charter Party is, when a Mercht or Merchts agree with the master or owner of a vessel that he vessel to carry goods to a certain place & he is then said to charter the vessel

It is sometimes agreed for so much in gross tho' sometimes the most usual mode is for so much per ton

The vessel is sometimes chartered for the outward voyage only & sometimes for the inward one but it may be for both

But the secretion deffs. of charter party from the L L is of if the vessel is lost before she arrives at the port of delivery you (the Merch.) are discharged from your contract.

But if she was chartered for the outward voyage by one Contr. & by another Contr. for the inward voyage then if she arrives out & does not agree then you are liable for the freight for the outward voyage but not for the inward

But sometimes the engage for both the outward & inward & for so much for both & then if he is lost before arrival nothing is due.

The object of the Mercantile law is thus to divide the loss as much as possible for in this case the Mercht has lost all his goods — then let the owner of vessel loose the freight 2 Vent 212.

(c) In this case the Master subject himself in damages to the Master for the disappointment occasioned thereby —

(d) Notice is here to be given to the owner by a note simply & by the first opportunity

Charter Party — Suppose she is chartered out & in — a Merch loads his ship at N.Y. & is to go so much out & in. But there is no freight to be found to come back with & so she returns empty — who the case of Merch must pay for it — was his own fault.

But if it was of fault of the Capt as he did not wait to get the freight. he (the Merch) pays nothing for of return voyage (a) tho he does for of outward voyage.

Now if a vessel

any vessel wh is very much injured ~~that~~ is not lost as when the goods are much injured as of Merch, tho lost 3/4 of cargo. Now here of law is of Merch may abandon all his goods & save the freight (b) If he dont do this he must pay of freight & of whole of it, but this he never will do when of goods saved will amt to more nor of freight; So wh of prin. is of when the cargo saved is not worth as much as the freight (Bur 8 8 2.) he may ~~not~~ abandon but vice versa he will (8 8 8) not.

Suppose of vessel disabled in a storm without fault of of master & so he puts into port to refit — & then proceeds with of vessel then ~~then~~ it — is of same as no harm had happened.

But the vessel was not worth refitting he may give it up as a bad job & receive nothing, but if he puts thus on board another vessel bound to of port of goods were consigned to, he may do it & claim his freight if he can reach & profit it, it is well, if he can refit — the freighter must let him have a reasonable time for of purpose

Charter Party. Now in case the Freighters are agent or owner, if he chooses to take possession of the goods & discharge the Master, he must pay the Master pro rata.

If the repair is not lost but the prop. is damaged. the freight must be paid unless he abandons it.

And the merchts have blanks wh are called a certain proportion of the way as 1/2, 1/3, &c.

The cont. of charter party is differ from all the mercantile instr. for it is sealed tho it may be made without seal.

And if a parole cont. has been made & a part of the sum paid. the merch is at liberty to be off on a forfeiture of what he has rec'd. this is consid'd as honourable.

And if the owner of the ship chooses to be off he may, by returning the sum advanced & also as much more, & this whether the cont is parol or in writing without seal & it an old & known usage of the Lex Mer.

With respect to the damages. as it may arise from the negl. of Master in sailing before a storm when it is apparent it is coming on, or be swill in a crazy ship &c. both the last & owner of the ship are liable but if the damage is by the act of God it falls on the merchant 1 Ch. 18. 78.

The establish'd law with respect to this is altogether mercantile. The owner of the vessel is always liable for the misconduct of the master not matter however innocent he may be

L Ray 152. Cortland
& Lewistie & Wil
Cornl 125.

Charter Party

Case A stated to B for 10 £
B. puts a Capt on board & A. knows nothing about
of ship or in what business she is in, when she is done, still he is
liable tho' of Capt is also liable Mordwtenh. Ref 45
194. 2 Ver 442 Molloy, 230.

There are instances in wh the owner actually enters into a cont. with & Merch to be liable for d done & d
but it would be so if that cont was not made tho'
sometimes of owner contracts to be liable for all
damage on penalty of such a sum & the penalty
he wd not have been liable for penalty without d cont.

If d Master or
Mariners embezzel, d ship or run away with d ship, the
owners are liable, altho they are ignorant who
the Master & Mariners are

But Coasters are considered
like common carriers, & nothing but d act of
God will excuse them from d dam. in all accidents, unless by the
enemies of d country or d act of God. So that the
only quest. is of liability from some accident
is, not a coaster or a sea voyage 1 Vent 190
2 Ld R. 1 Mod 85. L Ray 918

There is another power given Masters of vessels to bind owners
that Master of vessels when abroad have a power of con-
tracting so as to bind the owners & even if the owner
furnished d Master with money for the purpose
they are in cases of necessaries, repairs & the like &
& the usual method of getting these necessaries &c
is by Mort. of ship, & the object is to furnish ind-
ividual Merchts & foreigners to afford comfort to Mari-
ners abroad & for d encouragement of commerce

(a) The lender in this case has a lien upon the master or owner, or the ship for the repayment of his money

Charter Party &c. And there are considered debts of honor of the highest degree. But the Master cannot do this in port but only when abroad or at sea or in a distant port. & in distress 1 Hordr. 376. 2 Vern 443 Cow 636. 1 PR 93. 108. 1 Atk 119, Hardw 85. And no diff is here taken because the ship has gone out of the hands of the owner as by charter. Even if the owner knew not where his vessel was gone, Hardw 85, 195 These authorities a fortiori relate to all that is here

Joint Ownership or Shipping

The owners of the ship are about sending her abroad & they differ as to the place to send her to, the Majority in point of interest are for sale, now here the minority refuse to furnish anything, they cant be compelled to — but they receive no interest from the voyage neither do they suffer if the voyage fails tho if the vessel is lost, they loose their shares.

But now the Majority agree to send to Europe, when they then go to the Ct of Admiralty & give bonds to pay the Minority they share of the vessel would the vessel be lost, they then have the entire controll of the respective & whole voyage

And the Major. do not apply the Minority may apply & compel the Major to give bonds L Ray 223, 1285.

Now nothing is done & she makes a good voyage the Minority may have the profits by paying their share of the out fits expences ~~with interest~~

Joint Ownership 3 But if the is lost the Mariners lose the share of the ship Cutt 25. 3 Ray 235. 2 Vern 543. Le Ray 223. 1285. Hardr 473. 1 Vent 297.

Masters of Vessels The Master of a Vessel is a agent of the owner under an implied authority as when he has occasion to hire men he renders the owners liable for their Wages, Whoever may happen to be the owners as in case of Insurance, when they have a right to abandon & then if insurances are owners & of Master is agent to ye insurers & this is a distinction peculiar to ye L. Rs. & unknown to ye Civilian than a man changes his service without has consent

The Master by ye L. R. is liable for all damages arising from his neg. as sailing in a bad ship or with bad tackling or into port without a pilot & then or bilots to be bad

It is pt of L. Ra. that goods carried to ye port of delivery are security for ye freight & if the freight is not paid on ye delivery he (the Master) is not bound to deliver untill pd - for he has a lien upon them -

Hand the general lien is of ye Owner is liable as well as of Master but it has been a question whether the owners wd be liable in consequence of the Masters entering into an unlawful trade, but it is settled that ye owner is not liable for the unlawful trade, wh is unlawful in the country from whence the Master or ship sailed Hardw Rep 85, 194.

And the case to which the liability of the owner does not extend, It is in cases when the ship deviates from the course and the way to sail, the is gent

The owner is liable as well as the Master, ~~&c~~
But in this case the Master alone is liable
2 Ca. Ohio 259 -

(i) And if they make an agreement not to be entitled to their wages at a port of delivery, still if they claim them they may have the ~~of the~~ court is void, the Law in protect considers them as Minors they being such an improvident kind of people.

The Mode of settling Insolvent Estates.

They apply for Insolvent act & commiss.rs are appointed. The Mode is for the comp.s prop. to be applied to pay comp debts & private prop. to go to pay private debts & if there is a surplus of private prop it then goes to pay comp debts. How the comp prop pays 15 s in £ pay that then As has a surplus dined a g.to & pay it out.

Case 1st. The Comp. owe $2000 & the prop is $1000. then only 10 s on £ can be paid & owes $500 & he has private prop. $1000 then the surplus goes to pay comp debts & it brings the comp cr up to 15 s. B has $500 surplus so that pays all then no involving. but they are as poor as a church mouse

Case 2d. A & B. Cr. $2000 owe $1000 A $500 owed & has $1000. B owes $1000. A has prop but $500. his cred.s receive then no more than the 10 s be paid & then 5 notes to go to the comp but the cred.s refuse receiving 15 s in £ (c) but then A has paid $500 then he has pd 250 more than B therefore B owes A $250. but the debt is good for nothing.

Case 3d. The comp. prop is $2000. & debts $1000. they are then solvent. As private prop $1000. & debts 500. he is solvent too. B private prop 1000. & debts 2000. he is a bankrupt & can pay but 10 s. in £ how what shall we do with the surplus of comp.s prop.? Why divide it between A & B. so that B will be able to

Settl. Insol. Part. Estate } 15 Jon & F. by means of the $500 he will
mine of the companies prop, as the decision.

These cases I think fully explain the subject. —

See on this subject Beaures Lep
Mer. head of Partners.

The act it has been said his
agt the surviving part. now he may be a bankrupt
& the corp is bankrupt - now the Ct is a mere
prop. by means of the bt - & this prop must go; the quest.
is how shall we get at it. In Eng & Amphorin
all the States counties where they have a ct of Ch, the mode is to apply to
Ch, by a bill, founded on the judgt agt the surv. to compell the Ct to pay over the property
In Con we dont do so, altho we have a Ch. our
method is to bring an act at Law directly founded on
the judgt agt the surviving part. stating it to be ineffectual to satisfy
Show 189, 2 Ves 265.

There is a prac. among merchts of
thus acting business under an agreement to share
in each other profits & not losses & neither a firm
tho they are liable for the debts of the house. notwith-
standing the agreement 10 W. 682 2 HBl 247

The Rights of Partners have of each other
A & B are partners & have been
the partnership dissolved & B has much more prop in
his hands than A has. now how shall A get justice
done him? formerly in Eng the act of account was the
only relief, stating the case. & if found so, the auditor, a master
appointed by the Ct, & whatever B found more, A recd
of B but often there are many parts & there all interests in diff
prop & partn

(c) but here the same difficulty would arise as B would deny that he had more than he was entitled to, to ascertain the truth of which, all the accounts would have to be produced as in the former action of account.

(d) he must give the obligation in his own name or pay the money

Rights of Part^rs as each thought led them to Ch, & there they settled by one suit what each had a claim to, & this became the usual mode of proceeding & I believe there is not an action of act to be found in ye Books of Part 100 y^s. & the other method drove the man to a vast variety of acc^ts of account.

Why the Ch could not produce the papers wh a Ct of Law cd not do. Suppose cd & B part & B shd get more than he ought & shd turn it into money. it has been said that indebitatus assp^sit cd be not but here the account wd have to be produced, wh is inconsistable with the acc^n. Part^s if they had settled & B ter accounted to her more than (a £2,448) he ought to have, the indebitatus assp^sit wd lie. & has been held to be a good ac^n.

It is com^n that on dissolution of part^ship one part^r is appointed to settle the accounts. it has still been made a ques. wh^r he shd give an obligation to some third of ye firm & give the obl^n in the name of ye firm tho' the firm was dissolved, wh^r it would bind the firm. This has been done but is no quest^n & never was ~~dispd~~ decided untill 1 HBl 45 wh^r it was decided he cd not give the name of ye firm tho' he bind all of part^rs if comp^n was dissolved (a)

Whether a man (not knowing a purchaser was a partner when he bought) could sue of firm was a ques for a long time 4 DR 727, 705. 1 HBl 45 & 48.

That part^rs may avoid themselves of ye dissolution, wh^r debts contracted after ye dissolution of part^ship. Notice must

Partner. Dissolution by Lapse, otherwise great fraud might be practised, Many dispute arise on the subject "what the men knew" - & "what is the evidence of knowledge".

The partnership not long been dissolved. It was given in evid that the notice was published in a paper & Manbook of paper - the Ct held he had the means of knowing &c.

Agt. He did not take the paper. It was not published so long as to be a subject of public notoriety, & he did not read the paper, in wh it was published on account of political prejudices hence no verdict could be found, it was held to be no notice.

Another case in the country where the man was in the habit of visiting the coffee house for the purpose of reading the papers (R Al 993 Cow 449, 1 Sal 292) & held to be enough. He read these papers for the purpose of seeing of Bankruptcy & dissolutions &c.

Factorage

Slave & Copy

Factor & Broker. See much a like a Factor is one who is employed in a foreign country to buy & sell for a Merchant & act under a commission which sometimes runs thus "to buy sell & dispose of" prop "as if it were your own" & the commission by the L. Ch. contains the power of selling on credit, & Broker is employed at home.

In case of loss the Factor suffers nothing unless for some gross negligence 1 Bldst 103. Gelv 202.

Sometimes the comm is "to sell & deliver" here if a loss is incurred by selling on credit the Factor loses 2 Mod 100, 10 Mod 144, Molloy 499

Factorage

A acts as a factor to B & C separate merchants & has a gen'l commiss'n from both to sell on credit - Now if he sells & y'd mon. fails - has he gift to y'd money, here by y'd L Ch. B & C divide the sum recovered, in proportion to y'd amt. of sales

This factor is accountable for his fidelity, but is not liable for accidents or by using ordinary diligence & not be guilty of Ld Lt 5 9. Molloy 495

Singular Lead of L Ch. at is pleasant as long as consonant to equity.

Suppose a Factor whose duty it is to pay y'd duties dest he thinks he can run y'd goods safely. A does run them. but thereby gives the duties to his Merch't, & y'd Merch't proves that he run them for the y'd Factor is liable to be hanged if caught - & and bound to pay for y'd goods if lost - Now there y'd Merch't pays y'd duties for he expected to pay them & he loses nothing by that being run Cro J 253, Bacon tit Fac'r. but some auc. have consid'd this as a unwarrantable min. The Factor's sale binds y'd principal - still he can't deal with the prop'y in all respects as if it was his own, as pledge is for a private debt - it is going on y'd ground that he is known to be a factor. But if he is not known to be a factor he might pledge it for his own debt & the knowledge of his factorage (Lord 1174.) is supposed in the Cooke (1182.) where the prin is bound down

But when the factor is known to be but a factor & sells good contra to order, the purchaser is a tortfeasor & Ver 638

Factorage } If a Factor exceeds his commission either in selling or buying, he forfeits his wages by the Law, This is a singular Law.

When a man is known to be Fair & has sold goods on credit as he ought, to do & he is about to fail. if Prin. gives notice to debtor not to pay him they are bound (Cow 253) not to pay the factor.

A Factor by Law has Lien upon the goods in his hands, & he may retain them in case of a balance remaining in his favor after settlement. & this for any private debt not within his commission.

Suppose he sold factor at a greater price than his commission warrants the prin is not obliged to take them — but if prin. sends the goods & contrary he ought not to pay more than by the commission. he ought to give but if it held Lewis (2 Ves 549,) for in stating the goods were the

But he sells his prin. also goods on credit — to be held accounted & also sells his own goods on credit, to upon the credit of goods & he becomes a bankrupt, but the Factor recovers part of the money — he must pay it all to his principal — but the equity of this is not so apparent — for if a bend here of prop' of two Merchts they and have to divide. the prin of the mill is probably an act of policy, for surely he acted honestly

It is common for a Merchant to write to Factor to insure his goods & he is bound to do it — but sometimes he does not do it & waites that he has done it, the thereby comes insure himself being charged & preferring (2 Ves 39) to his principal —

(b) It has been long a dispute, where a man puts up goods at auction at a certain price, whether the auctioneer is obliged to let a bidder have them, if he is the highest, & does not bid so high as is set by the owner. It was held by the Court to go to the highest bidder. Cow 395.

Factorage } On Factor's death all of goods
in his hand at can be identified, goes to Prin
But if he had got it into money or it is all together
it then becomes of Factors (1 Lal 180) & his est is
charged to the amount of prin and debt.

(b) Quest as to auctioneers. If
a man ed set up goods at auction at a certain
price & a person bids them off at that price &
when asked ... he did let him have them he is not
highest bidder held Lowe 399. to go to high-
est bidder

If a man takes his goods after he
when a man makes a bargain & A & B. the prop
belongs immediately to B. if A or Bailor
ed not take
that prop, rather than another if B become a
bankrupt. but by L M. A may stop
goods in transitu, having found that B is about to
fail not already a bankrupt. but if they are
arrived to the place of destination or handed over
to a bona fide person they cant be recovered

A & B.L. as soon as the bargain is completed, the property belongs
to the Bargainee. & the Creditor or Bargainor has no more power
to retain the goods, or stop them in transitu, than if he had
never owned them. —

Ld. M.O. 319.

Bills of Exchange

A Bill of Exch is defined to be a requisition, another letter of one man to pay to another to pay a sum of money to a third person or his order. See No. 317.

Suppose an int. as the next to the title person to whom it is payable is any person to whom it is endorsed holds of legal title so can sue for of money in his own name, suppose C accepts the bill & does not pay it, D may sue C in his own name. A not in the name of B & payee

Suppose if C does not accept, (who is the drawee) now D has a right of action against the drawer or against B of indorser

Now this investing a legal title to a chose in action is peculiar to L.M. & directly opposed to of C.L, for there no chose in action is assignable as when a man sells a bond or note of hand it is not negotiable & covenants of the man to whom he sells it shd collect all of money. Now of covenant at C.L is good for nothing. But at length Equity interfered & if the chose in action was not sold to ex speculate or for some unwarrantable purpose he might maintain of action on of note in of name of the seller. for if A shd sue & recover of money he wd have to pay it over again & shd even

(c) for the promisee may withdraw & suit when & act^n is commenced on the Note, or

(e) A Bill of Exchange is no for a simple contract debt. that in a course of Administration, that an executor or admr. cannot discharge it before debts of bond, without being guilty of a devastavit. S.M.P. 2 18. Carth 373. It is also within the St of Lim & must be sued for within six years after it becomes payable S.M.P. 2 18. Carth 3.

Bills of Exchange & compell this. but if purchaser of it old could not sue in his own name at C L.

But in L M where there is such a case the prob in of Bill rests in my opinion 1 Wil 52, Co Lit 232. 1 Wils 229, 1 Ves 411, 3 DW 199.

If the A sd gives to B a bill payable to B or order the endorse will be able to sue A in his own name. A he will have the legal title A no one else will have an equitable title to A — But at C L he will have an equitable title (4 BR 740.) And here to go to Ch to settle (1 BR 621)

The consequences of C L only extend owners to great inconveniences, for the pri may dis charge of oblign this only remedy is to compell the man who pays d money to pay d on agn which is the province of Ch.

Its benefit of priority of legal title in of endorse is extended to policies of insurance, responsibility bonds of bills of lading but to nothing else not of a mercantile nature 1 BR 20 2 Bl Re 1272 3 BR 182 5 Ch 587.

(e) It is a simple contract as much as any promissory note but has some of the qualities of a specialty, the consideration can never be wanting in a specialty & of some principles as extended to a Bill of Ex when it is negotiable & liper this it can be shewn & it rests equally as of any other Note, when it is between d parties, but after d negotiation this cant be done

The prin where it is the give to d pft proves ~~that of~~ as governs the actions & settles why you cant then want of consideration in a specialty ~~note~~

Bills of Exchange. It is because in the civil law they held the conclusion is that no man was not down so formally to deal, on gent. to whom there was no consideration. But with the Bill of Exch. it is to protect & endorsee, & afford facility to commerce, & Sal v. 1 Bl Rep 445.

The Maker intends the Bill of Exchange call the Drawer. & he in whom provision is called the Payee. & he upon whom it is drawn & he is Drawee. & as soon as the Drawee has assented to the Bill he is called the acceptor. & when Payee indorses it - he is Indorser. & to whom it is indorsed is the Indorsee, & & the last indorsee may be become also Indorser. & he to whom he indorses it - is also Indorsee, so on,

When A draws a bill on C to Law presumes C owes A money & when C accepts, the qust. is barred; it is prima facie evid. but it may be rebutted

There is no certain information to a drawee if the drawer did in fact one of Payee. but upon he did one time A drew the Bill, Now the drawing of the Bill is not proof of the debt unless it was so contracted previously, but it has a certain effect so far as operate as a waiver of any claim to some, unless he (the drawee) is informed the drawee will not accept. & if he want accept the Payee may sue either on the original debt or on the Bill of Exch. 1 Bl 505, 602.

A.M.P. 1882

Bills made payable to bearer, pass without endorsement. S.M.P. 317.
Where a note is drawn payable to a particular person in order to negotiate it he must indorse it.

(a) for the act of drawing a bill of Exchange constitutes the drawer a Merchant, within the custom of Merchants, so as to make him responsible to the holder upon non-payment. S.M.P. 319 Carth 82.

The acceptor of a Bill of Exch. can not set up the infancy of the drawer as a defence to an action brought at the suit of the endorsee 4 Esp N.P. 147. 2 Salk 131-2.

S.M.P. 319. 1 Campbell 552.

Bills of Exchange & Checks are a species of Negotiable Notes which are always made payable to bearer. There may be the case with Notes but it is not the case with the case

If a Bill of Ex is made payable to bearer any man who holds it may sue on it as if drawer. ~~accept~~ ~~if he has accepted~~

The checks are never due until demand and refusal of payment. & are always considered as cash as soon as rec'd. But if you take a Bill of Ex for a debt it is not a payment of debt, but the acceptance of a Check is payment.

When ever you sue on a check (7 Sir 420.) you declare upon it as a Bill of Ex the form of which we shall see afterwards.

Who may make a Bill of Exchange

It was once an idea that a Bill of Ex could not be made except by a Merchant but now every man may do it — Coth 92 (c)

Minors, It is an agreed point that C.L. & L.Tr. is not optional to it — ~~that~~ a Minor that not usually bound a bound for necess, but if he makes a bond it is void all, — A Minor is not bound by a Bill of Exch unless he drawer, it even for necess. & this leads to a point, we is of you cant look into of consid. if he gives a bond. the A is — as a simple cont. & he gave a bond of $50 for a coat not worth $5, now the bond is not void. & the mist is the man

(e) And there must be at least one indorsement to make the Bill negotiable

Bills of Exchange & similar Cont. And this is
I reason this Bill of E. if indorsed over cont-
ts, and upon fr. I consid^n cont the gone
into, 1 BR 40, so is this case is a ruling of Mansfield's lord.

But if he arrives at age & the promises
to pay it, it is good (1 BR 548.) since we
see it is was not void, but only void all
if it was void no subsequent promise and
make it good - case of a fine court, but void
void.

A draws a bill, B is drawee, now if
he accepts, he is accepted. If he refuses to endorse, he is now called
indorser & he also receives it - to indorse over
for D it may take either by delivery to C or
B's indorsing it. & if he delivers it to C it
must for ever after take to delivery

For B indorses it to D but D never fills
up the endorsement - but delivers it to C. & then &c:
he calls upon B for it. & he must pay it. the
C writes for me at - he may fill up & in
dorsement himself - but he can never mo:
on but also mean a or of bill, & mor
of the endorsement - if he D has
a 1, dozen bonds - instead it - he the person
who gave him the Bill, who may be done
(e) by at. C L.

who may or may not indorse

But if he into lots & worthless to
more security, Dendors. & if A refu
to B. B may endorse it & nor B may sue
any man upon the Bill ever skipping up on
all the rest up to the Drawer. & if C
was sued in turn he may also sue - to recover

Or if it has been indorsed he may accept for ye honor of the indorser, as he did before for the honor of his friend the Drawer & in the case of Indorser, the Indorser is bound to the person so honouring him. Lil N.P. 217.

Bills of Exch. 3 recover his more & so on up to the drawer. But after there is an indorsement the bill is good. & if there is no indorsement it not a Bill of Exch. but is good between the parties.

A Foreign may become party to a Bill of this our Stock & act & will of every body else, was unknown at C.L. - as when a man is present when a Bill is handed to Drawee. he may accept or & denial of the Drawee & then the Drawer is bound to the person. & this is for the encouragement of commerce. 1 Str 765

An Indorsement may be made by an agent. but he ought to indorse in such case in behalf of his principal & he ought to; but it will be good otherwise but then he becomes indorser himself (L Ray 939. Beaves 85) wh. he did not intend. 2 Mod 321 Stra 955.

Qualities of a Bill of Exch. All letters to pay to a man or his order are not Bills of Ex. for it must be always for money, & not for money & collateral things besides, a Stra 1271

2dly It must carry for credit with it & not depend on a particular fund or on a contingent for if fund may not be productive but of Bill will be good between the parties but it is not a bill of exch,

If A sh. one B 100 & give such a Bill to C he & not indorse it 10 Mod 294. 310. Stra 591, L Ray 1361 2 Wils 376. Stra 1216, 2 Mod 325.

Form of Bill of Ex

Bills of Exchange 3 may appear at 1st sight to be drawn payable out of a particular fund when it is not so when it is indorsed by A on B - to C - for B to pay out of any of his money within 3 Months" but it is not due until 3 Months time thus was for B to pay to C & reimburse himself out of the fund. & B being accepted it, the Bill was good. L Ray 1481. 1545. And & above all that is meant, & & & Prep. out of my hte.

3d It must be pd at all events but on any contingency, for then it would not be a Bill of Exch.; there may be an uncertainty as to when the event it will happen but it must be an event wh will happen to a certainty. as when the father died Stra 1151, 3 Wils 213. L Ray 1362. 1796., 1563, 1 Burr 323.

As it is enough as it is said that there be a moral certainty the case is this when a Bill was drawn payable with 1 Month after such a ship of Mr Nary was Ld. of A, this case that & public will not by this Bill be admitted 1 Burr 217, or Stra 1217.,

It is all on ground that it is certain it is all one case of compt letters & parties well be good

Much is said in Roots in the word "Value Received", It is certain they are general used but it does not follow that they are necessary "is Negotiable Note for as soon as Bank perfected the Nature of Notes of specialties, & could not be put into L Mans 25 when it was decided they were not necessary. —

There are some cases in which the consideration of a note may be enquired into after it has been inquired into, this is always the case at C.L. & sometimes at L.M. S.M. 6 237. Exp No 117

Bills of Exchange & from which it is difficult to penetrate what ought to be inserted but I cannot see why it is necessary to insert — there, Chitty says it ought to insert.

Same Dispute as to if word "Order" whether it is necessary. The rule fixed and Bills to contain not that word Bond 214 2 Wils 253.

Has been decided in Mass. & Conn. if Conn. if word order is absolutely necessary without it the Bill would be defeated in its object

When if consid^n is an illegal one the law as it affects Mercantile inst^s diff^t from C.L. is no negat^n note cannot have its consid^n be enquired into after it is given^n. No right of any action at C.L. having an illegal consid^n to any the person will give that person a right of equity as it gives B a bond arise out of a corrupt transaction not only the giver of the bond may avoid the bond but also the transferee shall not be allowed to pay it — the maxim is that whatever right the giver had the right follows it into whoever hands it comes

So long as the inst^t is not negotiable the illegality will always set it aside, but as soon as it is negotiable its character is changed unless the person purchasing it knows of its illegality the he derives no advantage from it — but the giver may avoid it but otherwise he cant avoid it unless the illegality grew out of a Lt. wh declared the inst^t shd be utterly void. If the is C.L. inst^s inst not Mercl but in Mercantile it cant be avoided unless the person holding it knew it was illegal when

2 Bur 1078.

Bills of Exchange. The truth of, as a note for running goods of A is paid to C. If C did not know of its illegality it must be paid. but if A & B interfere, it is void at all events — A is a mercantile country, like Eng every nerve is strained to give energy to mercantile transactions

The Gaming act is a thing of late nature & there is no such thing as rendering them entirely void for the purpose of gaming for the ac utility void 1 Ch R 445. Esp NP 168, 6 TR 61, Stra 1155. Doug 736. 1 HBl 369.

Whether a contract man did receive the interest at the time of loaning the money and be usury — it has lately been decided (& until lately it was a great source of much litigation,) that it is not usury this is a prac of Banks &c. in this country, but they all say this neither receive more than lawful interest 2 Ch R. 392. 2 Wils 256. 2 ER 52.

It has become a prac to draw bills payable to fictitious payee. which has occasioned much difficulty. as if drawer a Bill on behalf of Mr is no such person as B. & B. indorses in of name B. now of course this is not of indorsement of B.. but this is now settled that the bill is the same as if made payable to bearer in wh case no indorser is needed. Sel NP 336. 1 HBl 313, 569, 598, 625

The Gen Rule as to the validity of a contr. is what is said to good according to the laws of the country where it was made a Stra 733.

However the time of payt is regulated by the laws of the country in wh it is to be paid as appears by

Usances are calculated exclusively of the date of the bill } Chit. 142-3

Bills of Exchange. } Bill payable on such a day
one in some of every the days of grace is
a is two days in other 3 in other 4 and in some counties
the days of grace are five.

Usance is a term
used in some counties, many to be paid after 1 Month in other 3 Months
the as elementary authors are of only, now the
usance payable according to the law of the country where
it is to be paid after it has been presented, in
this country the time is one Month.

I observed that
the Bill is not a part of a debt but a mere
of a right to a debt merely transferable recovery
is not exceptions B & B 1 Ed

Notes of hand
are negotiable instruments, of these we will
speak at large by and by

State of the Parties and their Obligations to each other

1st. The Acceptor has
notes to do with a note of hand, & whatever
obligation lay on the maker of a Bill of Exch.
lays on a giver of a Note of hand.

The acceptance of
a Bill is an engagement to pay the Bill to any
man who happens to be the Holder. & it is not an
obligation to pay the presenter more than another
1 Atk 715 Beames 466. 3 Burr 1663.

A man who previously
engages to accept a Bill has accepted it by the
engagement & as such may be declared against
it is no matter whether the Bill is accepted before

(9) Any thing almost, which is said or written amounts to an acceptance of a Bill of Exchange

Bills of Exch. Accept^n. Laft it becomes due B. N. B. 270
Hardw 74. Stra 1000.

An acceptance may be either by writing on the bill or by parol & both are good the usual method is by somethg in writing it has been contended that it is not good if parol because it is a prom. to pay the debt of another but this is not the case it is to pay his own debt in this way —

It need not be made to the Holder — for it is from the drawer. The drawee is accept of Bill it and his acceptance, as upon B of Exch. he endorse it over to D. it he calls a upon C. it is binding upon him, the accept^r Peakes 454 Cow 572. Mason v Hunt Doug.

A Bill may be accepted in part so as to bind the accepto; tho the holder of Bill need not take what not an accept^n tho he may take an acceptance to be payable at a later time than the day of Bill import & there will be a accept^n Lt 114. 11 Mod 190 Peakes 441

There may be a conditional acceptance. the Hold^r need not accept it, but if he accept^s it & cond^n are complied with 2 Wils 9. Cow 574

What is a acceptance? (9) there are many cases in the books on this subject — suppose then the Bill is passed to C & drawee — & he writes "seen". it is suffic^t it is a good accept^n. So when a non-acceptor writes to a friend, requesting him to pay the Bill, it is an accept^n Stra 648. Gilb. Lev 648

The Law presumes the acceptor had effects suffit in his hands, but this presumption may be rebutted by evidence to the contrary.

Bills of Exchange. Accepts. } An acceptor is an engaged who by any endorsee as well as of the Holder - & in case of an indorsee being found, & recovered against the Deft, pays some on also him, & this is done by striking out all the indorsements & the leaves the Bill ~~endd~~ to the last person suing & if it is after the 10 an a nut - is entitled without striking them out & the it may be done at the Bar

The Holder may sue either any of the indorsers or Drawer - he may the drawer may sue the acceptor when he the accept has had in his hands suffict to effects on of acceptance to pay it, & this is after due use of holder sues the Drawer & then the Drawer sues Drawee. The acceptance letter the security of the Holder for it is an add^n to also ways has that of Drawer & indorsers

If the Bill is made payable to "order" it requires by Decy but if "to order" it must be indorsed.

The indorsements are ordinarily blank left for the Holder to fill up - & it is after the case that a bill of Exchange has been made by a man order & (L Raymond 279, 3 TR 90, Doug 611-633, 351) decy it for the person to fill up

The Bill when drawn & presented for accept^n is dishonored if not accepted within 24 hours. ~~If I mean~~ the man who draws the bill makes an indorsement the person upon whom it is drawn should be

(b) generally, but he must be an authorised agent.

Bills of Exchange. Accep. at house. but if the man has only gone on a joining, it is not dishon. but if drawee has absconded or never had the it is dishonored — then the Drawer & all to indorser are liable

How it may be accepted.

by an Agent — A his agency need not be proved for it may be inferred from his transacting such business

In Eng by L. Ch. the acceptance is irrevocable, tho there are some cases where the man appears before a Ct to get the accep taken aletted

The Holder may alter the accep tance then is a case in Doug 447. where the Holder agreed to consider of acceptance at an end, it was held alated. the Hold. fail of accep. had no effect. in his hands but of indorsers were all men

It was much litigated quest. where a accept. had paid a part, & got a longer time to pay the rest, the quest. was, was it a discharge. held to be so only for that time

Hence a bill or note payable by delivery. the holder, if a stranger to the bill can sue in certain cases if at any time of parties to the bill — by ye L. M. if it had not been endorsed for in order. to sue he must be a party to the Bill. but he may have an action at Ch L — against the person from whom he had it — But if the accepter had accepted he could have sued him

How Bill does it to D it may the pay by delivery but he does not but indorses it to C & C to L. A the indorse is blank which may fill it

But if Dis a mere agent he may file it up in any manner he pleases

Bills of Exch. Transfer } either to himself, or to order or
if given him to collect he fills it up with
a power of Att & this destroys the negotiability
of the note. Bendorses it to D. A is a holder
it was sold to D. the presentee it to C &
when offered for payt
he accepts & he put it in his pocket
and not pay on it B but an action by C
for the Bill - the objection was he had endorsed
it to D. but D had not filled it up & so the prom
was not payable & B might have given it
to D to collect & the Ct sustained the action
for the prom was merely order B & there is no
end (1 Show 155. 1 Lal 128 - 2 Ray 871) he had
parted with the property. 1 Lal 130

When the Drawer draws the
Bill there was an implied contract arising from
the drawing & paying it over to pay the Bill either
to B but they subsequent indorsee, in case
C the acceptor does not pay it. The mode of
indorsement is for A to write his name &
write very close enough to write D to whom
he gives it write his name on his taking it to
C &c. A all whose names are on the paper
are liable, so that the more indorsers there are
the better the Bill is. A if acceptor has accepted
there is his additional security.

Lastly if B. the
payee too received a val. consid. & it can be shown
A he indorses it blank it D, it can be filled up with
a power of Att. but if filled up it must be
to pay it - to D or order, A if it is always in
the power of the holder to indorse it so as to

Bills of Exch. Transf. } make it negotiable 1 Lal
130

It has been under a quest. when it draws a Bill it must be payable to B or order nor when B indorses it to D. whether it ought not to be indorsed to D or order or the Ct have held that if the word order has been once used it is suffit. Case of a Decr Talled of it to be to D or order - the opinion said there was a variance from d Bill & the Ct held as above

When d transfer is by delivery the bona fide holder has a right to act against the Drawer, tho it has been stolen - or to the bona fide holder been obtained by fraud or theft (as payable to B or bearer) the Bill was robbed from d Mail - the thief carried it to a Merchant to trade it out & dea, it was contended that the Drawer ought not to pay it for d thief never had a title to it & that d Merchant had lost it - but it was held contra Non at C.L. if a man loses his Lose & it is now the owner can recover, give price est is temporis est is given that in the case alone a price of policy goes, so in the case of money being stolen - for it wd discourage commerce for the contr. prin to prevail, wd is it with d Bill of Ex. 1 Burr 452. 471, case of Miller, 1 Bl R 485, Beacock v Bells Dang; 7 Sc R 427. 1 Sel N.P. 369. 4 Esp N.P. 56.

Bills of Exchange, Partners

When two or more partners accept
payees of a Bill for endorsement by one of them is bound
in, a all but when it is payable to two or more
persons not partners in trade it must be endorsed
by them all, & the endorsement of one will not be
good. This was a very litigated point & on the first
trial it was decided the other will be bound by the act of one
but on the ground that quoad hoc they were partners
for this purpose & were merchants, & therefore but
afterwards it was decided they must both endorse
This point has been both ways in Mass & N Y
& Chancery opinions where that the endorsement of
the one bound both, (It also came before the
U S Ct but it was not decided (see it reported
in 2 Ed. Dany 633 on Appx. Vecary vs. Cazwick) for the Reb themselves put for the purpose as partners & so shd be
considered. It still showed now questio vexata. 1 Sel NP 371.

Some persons are empowered to endorse
by operation of law as if a feme sole payee of a bill
& then marries. her husband may endorse. & so
Ex & Trustees. as if a Bill payable to A for
benefit of B. this trustee may endorse to A
certify give trust. the assignees of a Bankrupt may endorse

A Bill cant be divided by partial
endorsements so as to render it payable to
two or more at other one, this is often done but
the money is paid, & if it is not paid & in such cases
it ceases to be a Bill of Exch. Salk 65. Carth 466. 2 Bay 360. 1 Sel NP 368.

Suppose you & I to endorse, so that

If B. the payee of a Bill of Exch. endorses it in blank and delivers it to D. & D. writes above the name of B. "pay the contents to C." D. is not liable to C. as an endorser, for in order for a party to be liable as an endorser, his name must appear on the bill as written with the intent to endorse Sel. N.P. 354. 1 Camp N.P. 442.

Bills of Exch. } ment. accept. Calls to move - ac. Then one but if he accepts it after indorsement he is liable to as many actions as there are endorsements Stra 516. Beaues 469. 3 Wils 1. Cart 5. 166. 2 Show 509. Beaues 266.

Different kinds of Bills

A Bill may be made payable to B or bearer, or Bearer only — to B or order

A Bill payable to B or bearer is assignable by endorsement or delivery - it lost pass the property.

When payable to bearer it passes by delivery

When to B or order it must be endorsed & after that it passes either by delivery or endorsements subsequent. as if drawn by A. for C. in favor of B. or order - his name (B's) must be endorsed on it either in blank or filled up. if being endorsed by him in blank it may pass by delivery or it may be endorsed by D, & then it becomes a negotiable note & so on; each subsequent endorser having the privilege of passing it by delivery or endorsment 1 Bl 666. Peacock. & Rode Doug

In case of the endorsement in blank it gives the endorsee the property, or power to collect it by power of atty. from B to pass it to D. if it is endorsed "pay to contents to D" it must then be collected - or D may do this, if endorsed to him in blank.

M

(a) for then the name of B may be struck out, & the acc^n be brot in B's name against the Drawer.

J. N. C. 364 n 48.
Stra 1103. 2 John
31. J. Spencer think
it doubtful.
3 Peake N.P. 225
1 Esp N.P. 180. 4 id.
200

(b) And this may be done let there be ever so many indorsements either blank or filled up.

No 8

Bills of Exchange Indors 5 While it stands blank it is not certainly known what is to be done with it but if filled up it determines it. If D fills it up to himself B can then collect the money, but the act must be done in the name of D. and if A is blank this is not needed the case (a) 1 Lal 125; 1 Show 63. 12 Mod 192.

The bill being endorsed blank by B is passed by delivery & delivered to whomever gets it may fill up the indorsement B made as a constituent B & him altho B may be an absolute stranger, & fills it up "Pay as by the order to C. Lal 126

Suppose there have been a half dozen blank indorsements & it has got down to G - he may strike all but the first & fill that up to himself or he may fill up any of the others. & this is most usually done if the bill, tho it need not be filled up at all

But if it is endorsed by B to pay to D. & D endors it - blank & C fills it up either to himself or strike out

A draws a bill in favor of B. & he endorsed to D. in blank & he sells it to C. & endorses it to pay to C. here he may strike out this endorsement (a) & fills up the endorsement of B to himself, & this is often the case to prevent a multiplicity of suits

So long as there is a blank endorsement on it it passes by delivery

2 Carth 5.
2 Vent 307.

Bills of Exch. Transfer } B endorses it to D filled up to "Pay rd contents. to D." It is now not negotiable but he delivers it to C endorsed it "Pay the contents to C for my use". but if B endorse had been blank, it might, it passed by delivery see Doug 639. even after the special endorsement of D.

Suppose one who has no interest in it endorses it, the warrant of that endorsement is merely a warrantee of a bill is good. If when that endorsement is in blank is filled up it must be filled up with a version that the man is able to pay if due diligence is used. If B of B buys an acc in the endors' he must show due diligence was used.

The Engagements of the Drawer

1st of Drawer. The Drawer by drawing the bill engages as much as if he had received it to pay the bill provided the Drawee is incapable of binding himself as if he be a minor also the acc is to be found. also that he will accept the bill. Also that he will pay it. If in default of either of these he is liable to pay it himself either to the payee or whoever receives it under the order of payee - i.e. to any of the endorsees or endorsees but he does not engage to pay it to any man who may hold it by delivery, in that case the C L process must be pursued of suing the person from whom the Holder received it.

In case of non acceptance the (Drawer) is liable for the principal & also for certain damages which

The diff^t rates of the Union give diff^t damages. on their goods
they are 10 p^r ct in Boston 20 p^r ct.

Bills of Exch. Drawer } altogether a mercantile idea
A & L yet recover interest by way of damages
but at L. Th. damages are recovered in addn
to interest. formerly it was the case that an
enquiry was instituted into the damages but
on acct of the difficulty of getting at them
certain damages have been settled by diff.
Motions. before of Resolution in the country was
a dfct. — But the customs of all countries
must be learnt. for the difference as to of damages
Among
merchants lie alle without actually drawing the Bill as
when he writes his name & leaves it blank
& a Bill is drawn over it 1 H Bl 313.
Proviso
Desperate qus. whether if drawer ed be sued
before the bill become due. for if of Bill
is presented for acceptance & A is not due it
must be presented again when it becomes due if he may do it
at the 2d presentation But it was settled
in the Exch Ch & Cor & A Cellen in Penn
that he was liable Stra 949. Chechwood vs
Mag Dany
He engages he shall be found
at the place, it has been a dispute what is
finding at that place. Now if he has only
gone a journey, the Bill is not dishonored
he must be looked upon as if he has removed
but it may be general law is to render it
necessary the Bill shd be dishonored, but these cases depend
upon their own circumstances.

(+) but on exon of judgt for d contt has been released, it releases the others

Of the Indorsers Engagements.

B endorses to D. B is the liable as a new drawer & makes a tacit engagement of all that the drawer made. Now D endorses he does so & is liable as B & so of C & all subsequent endorsers & they may be look to a new drawers & they are discharged notes (2 Show 441, 494) but what will discharge the Drawer (7 Mod 86.)

There are certain things wh discharge at C L wh will not at L & M. Now an inaffectual Jud of a fr. an endorser will not effect the rest. wh is so both at C L. & L M. But an inaffectual Ex^n does not discharge at L & M. Wh it does & stays that & stand, at C.L. that if an man has endorsed & ex^n is lodged on him & he is let out of goal the debt cant be recovered of the other at C L but at L. M. & dozen endorsers may be imprisoned & let go & then, the proceeding the prison of C L is that if one of debtors is discharged all are discharged. & the next on the ground of a release & pd ought to operate as a release of & rest & so presumptively if fact made but in the other case the fact is, not made & so on & comparison of the reasons, this Rule of L. M. was established, (2 Bl R 1235,) & this Rule is now well established

It is true that if in inferior Jud of for a tort to discharge of one tort forever discharges the other, at C L recov on contract,

1802 170

Bills of Exch. Holder

& the reason is that he discharge the injury —

The Holder of the Bill is entitled to recover if either of those things happen but he must do his duty first or he shall recover to if he does not present it for acceptance a proper time & manner or lets it lie along to an improper time or dont give notice in a proper time — & doco it in an lawful manner — nor if the drawee shd become insolvent the Holder has to bear the loss

If it is payable at a certain time after sight — & that is all that is in the bill, it must be shewn to the Drawee in a reasonable time for it is payable at sight, — it shd be shewn immediately after a lapse of time the drawee may become insolvent

If payable at a certain time after date; if it is shewn at the time the Holder has done his duty (4 BR 719.) but I dont consider this as a settled point tho it is generally so proved & mere but this is the decision

The Holder of the Bill must give notice to the indorser he intends to call upon & if he does not do it the indorsers are not liable, & there are certain decisions in Request where he must notify the "that he looks to them for payment" —

The reason of the receipt of notice is, that the Drawer may withdraw his part from the drawee as he has refused

6 East 8.
2 B & Ad 599.

Notice by any means within a reasonable time is good.

Bills of Exch. Holder } accept for if the Drawer had no prop. in funds of Drawer it is not necessary to give Notice. 1 Str 411

The Indr must have notice for any indorser has a remedy & it is for the purpose of giving them time to take benefit of this remedy. it is on an act of the drawer, & this all the indorsers have 5 Burr 2670. 1 Str 712. Str 242. 2 Burr 669.

Now if Drawee may accept a Bill variant from the time of it is to pay it at two months after the Bill is drawn payable at 1 month, then the binds the acceptor but the Holder need not take it. but he must give notice of the variance,

It must be presented before it becomes due & on non-accept. a ag. the acceptor, when it becomes due to see if he will pay it then 1 Le Ray 743. Str 239 441, 515. 649.

The law title here was he will pay it — Bl R. 742. Bacc 261

The Time.

Notice of ~~accept~~ non-acceptance of all Foreign Bills of ex. all along we have been teaching - must be given by the first post after the non-accept. & by the post post after receipt of post & if no post, by the first opportunity

The Method

is usually letter for inland bill. this should not be pursued. but here where the parties are near neighbours 1 Str 65 & 67

"Whether notice has been given in a reasonable time appears to be a mixed question of law and fact, or rather a quest. of law dependant upon facts viz. the situation and places of parties post-houses and the like" Kel N.P. 375 n 56. 6 East 3. 4 Dall 129.

Bills of Exch. Holder. The question whether the Holder has done his duty is a quest. for the jury to determine in Penn. the consequences of the facts the Judge determines.

(Altho) the Drawer having no effects in the hands of the Drawee needs no notice. still if this is the case, the Indorsers must have notice, 1 Br. 714.

Holders Duty

Holders duty as to the manner of giving notice

The Inland Bill of Ex has no particular form as to the manner of giving notice all that is requisite is that it be given in a reasonable time

The same as to a prom. note.

What is a reasonable time is a quest of law arising from the facts

But inland notes not being governed by the rule of giving notice, the damages were not given But it empowered the Holder to give the same notice for them as for foreign (1 Br 170, 3 Ba 514) & this entitles them to the other damages

But there is a certain form of giving notice for foreign Bills & any deviation from this forms destroy the Holders claim

It is this the holder calls on Drawee & presents the bill for acceptance & he refuses to accept the Holder must go to notary public or if there is none to a judicious reputable person the notary takes the Bill & presents it himself, then he sits down & writes the time of giving & the manner of

Boones 460

and the Law does this for the protection of the Drawer and Indorser.

Bills of Exch. Protest } proceed & this is called the minutes the Bill, after this he draws up a Decl. of all the proceedings, signs it in his offic capacity & this is called the Protest. but all this must be done in business hours.

Then the protest must be sent by next post to all parties concerned. but the Notary notes a duplicate which he gives to the Hold., & this is evidence wh entitles him to recover

After all this when the time for pay arrives he must present it for pay & on non pay the same process is gone thro with to protest the non pay or on non accept & this is then sent to drawr, & is a copy of protest &c. Hold which with the bill is evid. on wh Hold recovers against the Drawr

a incapable to cont. the protest must be made by Notary - so also if he is not to be found

And if there is a variance there must be a protest for the accept. cannot prove the tenor as much as for non-accept. but if Holder agrees to accept this variant accept. or notes coll. articles in lieu of wrong it is well, but he does it at his own risk

The Hold. has the Bill in hand & the time has not arrived for pay, tho' it has been accept., & he sees Drawr is about to fail it is duty of Holder & Indorsr to demand of accept. better security (9) & if he cannot do it the Bill must be protested

Effect of Notice

If the Holder has complied with all the requisitions of law he is entitled the to recover

(a) At C.L. the holder recovers nothing but his interest by way of damages

(c) and it is usual for the Drawee (C) on his acceptance to write to Don whose order it was drawn & if he agrees to it all is well

1882 a 59

Bills of Exch. Notice, Damages, Protest. Protest for protesting ~~this~~ C.L. (a) but if L.M. lies out when the old L.M. they must into the enquiry as to damages but this law would be settled at particular sum. Pl. to age by of deft nations Pull now left of U.S. (Correct) to render them of the damages equal or uniform throughout the U.S.

There is a species of Bills. When a Bill is drawn by one man on a second in favor of a third, on the credit of the fourth. A draws on C in favor of B on credit of D. If C accepts it is binding on him, now here is no contract between Drawee & Drawer & there is no presumption that A has effects in the hands of C the Drawee (c)

This cite all other bills may be accepted for the honor of Drawer — or the drawer has a contract with Drawee. It may also be accepted for the honor of Indorser, but in both these cases it becomes the acceptor a holder either or both to get it protested, that A is accepted in honor of Drawer & this raises a contract between Drawer & acceptor — & then these proceedings must be sent to the Drawer or Indorser. But notice is not necessary unless before the time of payt the Drawee informs the acceptor that he is retaliated, it need not be protested a reasonable time for the acceptor will have a right of action at any rate.

When the presumption that the goods are in the hands of Drawee is removed, the Drawee having let the goods go out of his hands has a right of action against the Drawer & either he may sue the L.M. or C.L. who been a guest.

(a) and therein the there were no particular consideration unless it be to oblige the Drawee.

Bills of Excha. Disch. of Accept. 3 It is a gen. rule of L. M. that an accept. is irrevocable, but what I suppose to be the true rule of L. Mer. is this, for at C L where there is no consid. there is no right of action but in L Mer there are many cases where the consid. need not be proved, the reason is that third persons are often concerned as in case A shews B a letter from C promising to accept his bill. the A gives B a bill on C for £1000 will be receive from B on this account. here the third person B might be injured, by the refusal to pay on the ground of no consideration. & when the rule is laid down in Rook of Rec. it need no consid. always means where the third person is likely to be injured or may be injured, by the refusal to pay on acct of want of consid. not mudum pactum is a thing known to L M. The Holder of a Bill may discharge the acceptor with by parol or writing & the binds him. (d) B told of Bill agt C C accepts but afterwards says he has no effects of A's in his hand & requests a discharge from B. B says he will look to A & drawer. & thus binds B. for C might be injured by the promise if it was not the case that he was discharged by B. Agt. Conceptis & had no effects of A's in hand. & B had endorsed it to D, D brings a suit agt C. & arrests him. but finding C had no consid. he took an obligation of A. & B. & did not discharge him. he the same words to C, that he need not trouble himself further. & then he returns, & claims of money of C. but the discharge is Doug 244. or 237. cited & ded.

(C)
The accept^t is holden untill d^d Lt of Lim mus whom d^d contract

Bills of Exch. Discharge of Accept. ~~It was~~ co-ho indulgence

unless it amts to a dec. that he will not look to him, is suff. as if drn on R is favr of B & he endorse to D. C informs D he had no funds of R's in hand, & so D instead of keep. the accept. & notes to A requiring pyt. C note a little of Wm's to this, to D, as agreed to pay it, but afterwards did for a while pg interest. but afterwards failed. & the bill returned upon C. & the trial was held, & held it no discharge by this conduct Ltra 733.

So a receipt of part of the drawers money & the drawers note indorsed, is not a discharge of accept. only Tanto Dang 2 Ld Raym 747. 335. diffted.

If due notice is not given accept. of this money being received from drawr & any injury arises to him therefrom it will operate as a discharge, as when after short pyt. has been made L R 7 414) & those in the other hands & he is called 1 Wils 48 & refs for & whole

Once an opinion that he must call upon accept. & drawer before ed come upon the indorser (Ltra 441.) but this idea is now exploded (2 Burr 669. since this last decn it has not been questioned.)

No length of time short of the Lim. discharges the accept. of a bill without offer of bill tho' dur. accept'd holder calls on drawer & takes a bond — this gives only an additional security & it does not discharge accept. for he is as much liable as he ever was

Bills of Exch. Disch Accep. When accepted raised so to pay 1/2 the sum — the Drawer by this is ~~[illegible]~~ liable to the rest, & the acceptor is so far discharged but it must be protested.

When the acceptor has been indeed by Hold. A ~~which~~ has let the Bill to lie alone. & no notice given to drawer or ~~[illegible]~~ indorser of a note, no after notice will render them liable, but if the drawer of bd are std afterwards promise to pay: it is said he wd be liable, but the opinions are diff; for as the case may be he is under no moral oblign to pay it the time may be when ~~it~~ he is under the moral oblign, Now if the hold. says he is about to become a bankrpt, but I say he had his prop. in his hands as he std ~~loose it~~ but wd have withdrawn it — had he had notice but now & it has said that if the man did not know of his legal liability, he ~~shall~~ not be bound. but this is letting a man avail himself of his ignorance of the Law Chit 102 n

Now if A had lost nothing I am inclined to believe upon a fair trial he wd be held to his promise, & the moral obligation I think std be of criterion

Bank Notes, Notes of, & Drafts on, Bankers.

There is a species of paper wh are called Bank note, notes of Bankers, & Draft on Bankers &c. Now Bank Notes are call'd & pass as money. & will pass as such by Will, now (3 BR 554) Thus under the annuity Law wh provides that cash must here be used, they pass as cash. but in case of tender, they are not a legal tender

Bills of Exch. Bank Notes } The Ct has said that if a man offers Bank bills in lieu of Bank And objection made to them, as being Bank notes & not Gold & silver it shall be a legal tender 1 Bl 554

And of Bankers Notes & drafts on Bankers - & there is some effect in & some towns & countries. but when received they must be presented in a reasonable time, for hoyt. then last may be endorsed & w.th the same bills of Exch. S.H.P. 400.

Now what this reason all there is, is very important, & so we will consider the cases.

The Loss - & demand must be made within 24 hours, and Drafts in all large cities

On 1 Str 415, Dis. a Draft a Bker was given out he & man who received it 20 clock next day, he called for Gold & the Banker had failed - it was held he had acted a good part - but contended that he shd have presented the same day - but it was to no effect.

In Str a 416 it was rec'd at 3 o'clock - & early next morning he called on the Bker & he did call in the afternoon & took the money - & he returned not until 4 o'cl held to be well - but it was proved that it was a question of sending the money with the bills in the morning, & he did not usually receive the money till afternoon Str c 550, the case also disapproved of - & contd held to be a loss. & contended he ought not to have left the Bill

Str 310

Bill rec'd at 12 o'clock & carried with other notes, at the same time, he called at 11 & did not get his money they told him to call at 2. & then they had not pay it, held to be early enough & he shd not loose - & the jury found

Bankers

Bills of Exchange. Reasonable time

Stra 1244. rec'd after dinner & call'd for before the 24 hours were up. — held to be no loss.
He rec'd the bill in the forenoon & call'd next day afternoon & held it to be a loss.

Beaves

482. More than 24 hours elapsed. A contrary opinion of the Ct the jury but in no loss — A new trial granted on motion.

A Bill of Exch. between neighbours. & no need of notice by post but the Ct L notice was enough, the parties lived within a 20 rods of each other

Usance is a term wh was once used a great deal. It means a certain space of time wh time is diff in diff countries, in this country it means a Month see Bird 4, for the custom diff countries

A Month

by L. Mr. means a calendar Month whereas by Ct L it means a lunar month or four weeks

The days of grace is a space of time given for pay after the time of pay is expired, in this country it is 3 days. It is the most usual term in the Mercl World.

By L Mr. if a note falls due on Friday it must be paid on Saturday by the Ct L & the Monday following

"for it is asked "what is from the day, if not from the day of the day of the date"

Bills of Exchange. There has been much construction as to what is meant by "from the day", "from the day of the date" or "from the making". By C.L. it has been held that "from the day" includes the day. "from the day of date" excludes the day. But by a late decision in Lord Ch. says they both mean the same thing. Not merely does it mean include, sometimes exclude the day & this is to be determined by the intent of the parties which can be got at. Thus an act of life was given "from the day of the date" to commence — now a freehold cant be given to commence in future & so if the act is to commence on the next day it will defeat the lease. So here the day shall be included.

In L.St. the new bill any difficulty about it for bill. the day is & has always been meant to be included from both expressions.

There are no days of Grace to a Bill payable at sight, altho' it did seem to be more necessary there than any where else, & this is positive law.

A Promissory note, is negotiable when payable to order or to bearer. This has been disputed, whether in the case the delegate endorse it over, that L. of Am rendered them negotiable — but this it does not bind us, tho' it was made to settle a dispute. And no argument can be drawn from the opinion of the Legislature that it put them on the footing of Bills of Exch as regard the negotiability.

This St of Am has been adopted by almost all the States in the Union

Bills of Exch: Prom. Notes. But it was held that in those States where there was no St to this effect, they were not negotiable. But Mr Chipman Chittenden says on the subject convinced the judge that they were negotiable at any rate — that if payable to pay B or order now this was a promise to pay B or the more Bound him to pay B or, & is considered

The above idea was prevalent in Com until the late St was enacted rendering them negotiable

Some confusion

has arisen from confounding the Drawers of a Bill of Exch & a Drawers of Notes. but now the Drawer of the Note is the same person as the acceptor of a Bill of Exch, the maker promises to pay so does the acceptor & the same laws that apply to one of those is applicable to the other, & they are treated alike.

Previous

to a Act Lt corporations by their agents used to draw Bills & endorse them — & what is in the Books contrary thereto is in consequence of that Lt.

In this county we have no such St. & we are in the instances of Ly, before the St.

It was con

tended that where a Bill was drawn "to the order of B" that ~~not an act~~ B.ed not bring the action but it must be brought by a non order of B. but it is now settled to be the same thing as "pay B or order" & Stone & Todd 2 Mod 235

A Bill payable

"to Bearer" may be endorsed. & the endorser then is

Beaves 441

Bills of Exch. & Prom. Notes. } liable to Drawer but if it is not endorsed the Drawer alone is liable & it takes by delivery. 1 Bl R 485. 3 Burr ~~1560~~ 1916.

If A gives a note of hand & promises "to account" with ~~him for~~ B or order for 50 £, this has been occasion dispute but it now settled to mean simply "to pay"

A Prom.ry to accept a Bill to meet an amt. is an acceptance. Now here B may take the Bill say it is C - & if he refuses to pay he may declare against C on acceptance. Now ~~here~~ it is void the is no consideration here & therefore is not bound. This by L L M is of no consequence to C & it will be of immense consequence. Now if a third person is concerned & the third person will be a loser by the refusal to pay, the acceptor shall be compelled to pay, tho if a third person will not be injured by the promise he (accepting) will not be allowed to pay, and ~~the~~ strength of this ~~epistolary~~ promise. Now it is true the Drawer, here, has no equity - (having no effects with Drawee) (Case as Aunt Doug.) but the Holder has nothing to do with this equity - between Drawer & Drawee

The man may accept the Bill variant from its tenor & he shall be bound by it - but the payee is not bound by it, for he may get it protested as not accepted. Now a d mist. & accepted from my dealer when it was accepted & the acceptor cant plead d variance, the reason is that by the variance of the mist. which was payable in June & accepted March. June is struck out & March inserted, & paid or the refusal to pay the Holder strikes out the March &

L Rg 871

Bills of Exch. Variance and altes it to Jon' a gr Now this it
bl wd be a forgery, but not so at L.M. & so

A men - gave a blank note
to another to be filled up by d second person, Question
wd be wch a Note be good. (Rufel vs Ligatt
Doug.) It held it - a good Note

A Bill was endorsed
blank and carried for accept^n & d Drawee put it
in his pocket, d quest was how std he (not) recover
A, B, & parties. now if D d Holder wd prove the
pocketing there wd be. but D. did not bring the
act^n but B his endorsee that d act^n for as it was
not filled up be no end, was there that B had ever
parted with the prop for he might have given it
to D for collection, so B brot the act^n & brot D
as a Witness of d fr cheating, for D is not a party to d
Bill, & concerned in d suit.

Bills Payable to "B or
bearer", may be transferred by delivery without endorse
ment. A the act as fully d prop. of transferee as
A endorser

By L.M. proceeds ex. d ground of the D
never had effect in Drawees hands to d amt of
the Bill, Again a Bill to B. drawn on D. the
old debt wch bearer is good untill paid,
But now when a man buys a Bill, if the
Bill is lost the debt is still good agt Drawer the
defft from giving a bond in Court for in the case
if d have died in Holder's hands the debt is discharged
Prom. Notes of
hand are negotiable as a d some pertns as Bills

Bills of Exchan. U.S. & Exchange all Law p. 17.

Inland Bills of Ex by C.L. are not governed by rules of Forg. Bills of exchange as to notice unlike the L. was made & after the 1st if the same notices not given you could recover the debt. but if notice was given according to Law by protesting, y. Holder recover his damages in addition to his debt.

As to the country, Bills of Ex as to persons of d same state are not governed by d L. M. but between diffr states they are treated in d same manner as foreign bills

In some of d states Inland Bills are put on d same footing as foreign bills but in some of d states they are not, A great one now in this state where a bill on a neighboring state was a foreign or Inland Bill decided on d above evidence of considering them as foreign.

By Gen of C L when a man is obliged to pay money it may be tendered at the last hour or the utmost convenient part of the day - for the (Cred.) is not obliged to be at home all day -

But for a Bill of exch. there are certain hours of the day in wh. business is usually done within wh it must be presented. & d Holder has a right to call upon him at d earliest of these hours of business for if d money is not paid a great deal is to be done in getting it protested.

Remmedies.

When there is a privity of contt as between the parties the C L mode may be resorted to. to the A owes the money. So where B had endorsed over the Bill to D. D did not sue him by the law but by C L. but if D had endorsed to C. C must sue B at L Mr. or he sues D at C L.

Now D dont endorse it but takes it by Delivery nor C is not party to the Bill A no cont sue B by L Mr. but he can D. by the C L.

The L Mr differs from C L - in that it acts a contt where there is no privity of cont

Formerly they used to set out the custom at large & thereby the court within the custom but this is not the mode of proceeding for the custom of Merchts is not mere considered as a custom but as a Law of the land. Not if there be a custom in some particular place it must set out - this Formerly did here done this. Now suppose the endorse D. was about to sue the Drawer A, they did state that there was a custom of Merchts that if one man drew a Bill in favor of another or a third. & the person in whose favor it was drawn did endorse it over. & if the person that takes it to the person on whom it was drawn & the refused to pay it, then the drawer of the Bill by this means becomes liable for the sum. & then declare that they was the case - that the Bill was drawn in favor of B & that endorsed to D & presented to C the drawee & he refused to pay, & so A becomes liable wherefore L (the holder) brings damages.

Bills of Exch. Remmedies } But C had accepted: & then the
State the custome, so far as to ye acceptance, &
that ye acceptor was liable, & then he proceeds in
stating the case. & concluding that in consequence
whereof C has become liable, & ye Holder was
damaged so much

You suppose the Bill had got
two endorsements, on it & the Holder calls upon ye Drawer or Indorser, or acceptor if he has accepted too, whom he selects for ye victim. & then he goes thro' the same story again

But this method is now at an end. & now nothing is done but to allude to ye custome for it is considd as a part of ye Gen Mercantile Law - the State that A, according to ye custom of Merchants drew a Bill in favor of B &c &c, &c, &c, &c,

You suppose A the Drawer had met the Drawee. he wd state that the A, according to ye custom of Merchants drew a Bill in favor of B on C. & that C accepted & delivering back to B. & then he carried it to C & he refusd to pay it — no need of stating that he (C) had property in his hands - for ye Law presumes he had prop. but if he had none. (C rebutts his liability by this avvrment.)

In case the Bill had got into the hand of ye indorsee he must state the protesting & notice the acc is by Dard &c cept Indrs & that he was damaged so. Then B states that the Bill was presented to pay & was not paid & the ye Bill was protested.

The whole law must be true in every more ye Decr in all that is necessary to be done

(g) and the omitting to allege the delivery to payee has been held to be immaterial, for this is included in the allegation that the Drawer made the Bill, 7 E.R. 596. W.M.B. 983.

Bills of Exchange. Remedies } Now suppose a Note of hand purports to be by two persons jointly & it is signed by but one. The acc must be not as if both had signed

If signed by one as joint and several purports to be with several, the custom now is to use it states a L R 1844.) A mere joint with the st to not - Bj

If as agent, clerk, or servant signing &c for another the Deer states it was done by the principal for whom it is a operation of Law

To recover thus in all these cases, every thing must be stated which shows you have a right to recover as protest, circumstances &c

For all cases there are one thing wh always must be stated. as that the Deer drew the Bill in favor of & delivered it the payee & that it was addressed to ye Drawee as payable to ~~a man~~ the payee or order

The time for making it need not be stated tho it ~~does~~ usually is done

That he signed it is not necess 2 ye d must that he made & Bill infer that he signed it (9)

Prot by Page

exp accept all these facts must be stated & also the acceptance & refusal to pay

Not necess to state that he "presented" for this is implied by ye d acceptance wh must be stated.

"The Memo" of acceptance need not be stated as if he wrote "accepted" and leaving it for any thing wh regards it may be given in evidence wh nice, matter of acceptance appear

Bills of Exch. Remedies } 2 Stor 180., 422. 2 Ray 364, 1548
1376. 2 Stra 817. 1 Wils 185.

By L. M. the quo modo need not be stated in all cases but at C.L. it must be stated as well as the "quid" the L M is not so nice as this point as the C.L.

The L M. require not the same nicety in describ. a count as at C.L. When we declare on a deed we state a particular deed &c but in L. M. he merely states or makes a Bill

Suppose it turns out and true & the endorsm & acceptance was after the time of pay. it is no matter. for he is bound even if he accepted after the time of pay.

Suppose 2d bills

the acc. & 2d acceptor. then B has indorsed it over to D it has been presented to C & he wont pay it. & the case states the drawing of the Bill &c & add "that B indorsed the Bill to D & that C had accepted" — the reason is that D. title must be made out it is done by spec. of the endorsements

The Word "Endorsement" is the only technical word necessary & if the title is disputed he may fill up the blank endorsement to himself

But

now there are intermediate endorsements & all are blank. E holds it & he wishes to sue acceptor. There is here no necessity of saying more in the Dec. than before if E strikes out the intermediate endorsements & fills up B's to himself — And if this is not done the intermediate endorsements must be filled up to the acceptor indorsee & then you must declare specially in the words of the particular endorsements, but the blank endorsements need not

Ray 534
1 Fol 12c
Bartl 209

Bills of Exch. Remedies } ct. for the P. has his authority by reception.

The Words "indorsement" implies a written assignt & delivery & therefore you need not state that he assigned it over & delivered it, for the word Indt expresses it —

If a Bill is made payble to Bearer it is unnecessary to state any endorsement unless there has been one & then it may be stated. — This may be necessary in one case wh it has been endorsed to one person & he has endorsed it to another, it may be necessary to go into the proof.

Bill by Indor. wh states already paid the Bill & the acc is agst the Drawer. It has got into the hand of Q. C has dishonored the Bill. Notice is given to Indor. & Drawer, now here any of the Indors has a right to save the suit, to go & pay the money for they know of their liability — Now Q sues & says it — the he states that B endorsed to him (Q) & that that Bill has been presented for accept & C has refused & by that means he (Q) became liable for the money & so has paid it — in consequence of wh C & the Drawer is liable to him

This often happens. It is done to secure themselves out of the Drawer as we then are a probability of his breaking

There is a peculiarity of L. Mer. wh is, that there is no necessity of stating a promise in the Drawer — so neither you have set out & state that in consequence of failure of acceptance that &c. tell all the facts. I think the Decl would be good as L. Mer. the at C.L. the promise must be raised, but I would contend it even as C.L.

Bills of Exch Remedies } The reason is, that if I draw a Deny against the Deny contest that there is nothing added by stating the promise. for every thing necess to render him liable is already stated without it. There is a suff attending all the cases. upon the Deny to be sure the facts are not suff. nor can we deny. If there is this promise, we acknowledge the promise wt we wd deny. So that we cant have the judt upon the Deny whether the facts alleged raise this implied promise

Now perceive the ref of the Ld
If a Bill may have concurrency remedies. as against
Drawer Endorsers. in consequence of the several liabilities. now here by Ld L. the may bring his suits
agt all of them diff persons at d same time &
this is not of d nature of suing for two remedies
for d same thing — now all these persons are liable at the same time altho it is for d same thing
now he judt may be rendered & exec issued upon
each & still he can recover ~~all~~ but one satisfaction of
the debt. but he does recover the costs in all the
accns. Now here the Drawer for his coming forward &
paying the Ind the debt & all the costs in all the suits
& then E. has all he is entitled to but if Drawer Dont intend
to pay all he pays the debt & his costs. & then E.
issues exec agt the other for their costs
Now suppose A has rec his debt & costs — then the
other parties may come forward & pay up their costs
& if E wont take them but shd proceed to execute
exec — A is contempt of court + he is liable to imprisonment
& obliged to pay back d money

Bills of Exchg. Remmid. } And of the same thing is done after judgt 1. E. and proceed he would become liable to the same penalties

In ye case not by ye Hold of ye Indorser he must state in addn to yr order delivery indorsement presentation & refusal. & also you must state that you got it protested & notified Pt. & give notice by sending the Bill Protest by post. & after this you are entitled to recover but not unless this is done unless it be an Inland Bill.

The law is the same where a a Note of hand only you must state it be made the Note — — the ye Holder of a Note is just like the Holder of a Bill of Exg. Now suppose one a not a of C who made a Note payable to B or order & it did go no further but B told me C. if there was no consid. there could be no recovery.

But now if he endorsed it to D. & he sues C he must state any that C made a Note payable to B or order & B endorsed it to him. & he may then recover

It is a common thing for a man to draw bills payable to his own order and C he accepts it & returns it to ex. & then he endorses it over it is then a good Bill, this is one way to "raise the Wind".

In all these Decs you must state according to ye operation of Law. there is a guest at a gittering West Hall for a great many years it was into a new Drew in favor of a fictitious Payee and Mr & there was no such man as Mr & then ye Drawer

(c) But this presumption may be removed by evidence

(d) which he made A rule any today upon it.

I 10 Mod 6. It is said he consented. but I Ld Hy. this opinion is said to be contradicted — But it is not so.

Bills of Exch. Remd. } endorsed in P & B name this must
on a long time until they established the rule
that the land mistry of N & B, shd be proved. the
confused the Ser. world until L Ld ruled it
to be the same as a note payable to bearer
see 7 ed Kid 208 to 260, in ~~red Kid~~, 1 B & B 183.
485, (AR 313. by Wilt Pleas)

Q — A Bill payable so many days
after date, you must see the Bill was made on
what day it is dated. & if there is no date, even the
day of delivery — for if date & delivery of a deed or instr.
is the same thing only what is called the date is
(c) considered prima facie evidence that it was delivd
on that day, 2 L Ray 1082.

Now when a Bill is drawn & endor
sed by an agent or do you say it was drawn by
a principal 12 Mod 1246.

Now if it was accepted it at a
variance we merely state that it was accepted 1 L Ray
364. Carth 459.

~~Aver~~ There are some cases in the books in
my Notes on Endorsers suits on Endorsers, the shd state the
made demand of the Drawer, but this is not now
Law, for law all the parties are liable to ~~the Hold~~.

There is a
question on the opposite opinions have been advanced but
there are no decisions on the point. Whether a Drawer can ever in the course
of Business become an Endorser of that Bill, as D
get it, & he endorses it to A. now can A hold
the Bill & sue any body on it. Now Dawson and
10 Mod 1 & Pearson may be ~~at~~ cited not AR 89

Bills of Exch. Remedies } In this case if the Bill had been dishonored when other the case materially for the Bill was not then negotiable of course he (A) was a bad holder of the Bill

The Drawer against Drawee because he did not pay after he had accepted. but it tells the story about his making &c. but the quest was whether he ought not to state further, that he had prof. in C hands. & the Ct said no. for if he had not he can't recover — & it is the duty of Drawee to state that he had no effects in his hands 1 B Ra 59.

But accept. sues the Drawer — the state of A drew a Bill on him & he accepted & paid & had no effects in his hands & this entitles him to recover

If the accept. & Hon or of Indorser or Drawer details the same story & the Bill was presented ~~to accept~~ Drawee & he refused & so had Hono of Ind or Drawer & then gave notice to the parties for whom Bill he accepted 1 L Ray 538. Sal 128 Ba Th 409.

The consid. after a note has been negotiated may not be enquired into, ~~Will~~ & plead it in ~~of~~ an inable contract the good faith here is not apparent in pa. ex annos.

& this is the mode of pleading in this case

Here is a case where a man plead specially that he had given a Bond in full consideration of all he was under. now this I shd suppose wd be a good plea in a C L case — but it held it amts to the general issue. ~~now aft.~~ & the

He proves the remainder of his debt under the commission for drawer, & showed a third party to a bill, paid the other proved before his commissioners. what remains of said debt after receiving the dividend of said two first parties

2 Ves 114-5
2 D W 309
407.1 C SH 109
L 10

Bills of Exch. Remainders from ap^t & then given the Record not in evidence

What is meant by non ass^t? It means he was not liable & does not mean he never made it, & this by Ld M. & is now extended to C.L. transactions; he may plead the general issue & the fact in evidence, or Fraud, Usury &c.

Once there was no such act as ass^t but the action ad. it was an acc^n of Debt - & Mansfield^t gave by 11 & 12 Wm 3 c 14.

Proceedings of the Holders of a Bill of Exchange against Bankrupts

We at present have no Bankrupt laws but we probably will have

The acceptor Drawer & all Indorsers are liable to the Hold^r of a Bill of Exch. now one of them becomes Bankrupt. the Holder has a right to have his debt paid under the commissioners as well as any other. Thus suppose A & B & C are Bankrupt. he represents it to comp^r & has it allowed he pays but 15/ in £ & then he pays so much of A & then if Drawer becomes Bankrupt he pays 5/ p^r £. then then goes also to the other pay the rest

Now suppose all the parties are Bankrupt - there the mode of proceeding is diff^t. he may prove the debt under all. & receive a proportion from all in the proportion they pay on the £ but here if he over receives he receives but the amt of debt

The rule then is, if but one becomes bankrupt he prove the debt & gets what he can & then get the rest

Each Bankrupt receives the amt of his Debt pro rt if I can get it.

in proportion to their demands. But if all the parties to the Bill have failed, he proves his whole debt before the commissioners.

When a man becomes a Bankrupt all interest on his debts ceases. If it turns out he is not a bankrupt & he recovers. Then the Interest revives.

Mere nudum pactum by accepting the Bill drawn by the creditors consideration & B who endorsed it - & he becomes a bankrupt.

A draws a bill in favor of B on C & accepts without consideration & A becomes a bankrupt and B might prove the debt & recover rateably but he does not, but goes on C. & he is alleged to pay the debt to the A's & debtor of C - The quest. is whether the debt of C is discharged by the discharge under the commission it is settled as a principle that at the time of his bankruptcy there was no debt owing from A to C, & therefore C may sue A. 2 Wils 13. The point is that the debt must be bona fide due owing at the time of the commission to be proved.

Proof required in these actions.

The action is not against acceptor by the holder. The drawer's hand need not be proved because the acceptor is supposed to be acquainted with his hand writing & if it had not been his hand he need not have accepted & by the acceptance he has admitted it to be drawn.

But if in one of these cases where he had proved to accept the doctrine does not apply - but the hand writing of drawer must be proved in this case L Raymond 1446 Burr 1354. 1 Bl Reps 390

Bills of Exch. Proof } In this case of the acceptor the hand must be proved.

If the Bill is to Drawer there is nothing to be proved but acceptor hand in this case if the suit against acceptor or

Letter or

against Drawer of Bill of Exch. not the hand endorsed, what is necessary to be proved is existence now the hand writing of Drawer is proved by acceptor & the right of end. depends upon the endorsement the action is brot by D. now what is his authority to sue. He must prove the hand writing of Endorser (B) & then he has a right to the Bill is to prove the end. & the end. case if there was a 2d endorser endorsee

Letter or

Hamerus bor. 2d Cost of Ham

Bill of exch. special endorsement & it has got to 2d hands of C who presents it to C & he accepts it then the endorsement of the endorsers must be proved never mind how many the case. This diff. from the case where the endorsement are blank the hand of last one need be proved

It has been argued that does not 2d accept. prove the hand of the endorsers as well as Drawer the reason is this is to him all strangers they are not his correspondents 6 Pa. 654

The accept. was a conditional one. now here the Hold. took it with the acc. after the time was not obliged to have the hand of 2d condition must be proved ~~to have~~ and then will be case

The Order was 2d Ind. in the case

Bills of Exch. Proof of Indorsement must prove the hand writing of Indor. 1 Wh 713.

The Holder finds he can get of many of accept-ing the acc. of Indor. he proves of hand of the Indor & also that he has given him notice by mail of protest the hand book to him for payment

If he sues the Drawer he must do the same as to of hand & notice

If the Indorser is ~~proved~~ sued the hand writing of the drawer & all previous endorsements are proved by his endorsements. —

If the last previous Indor. the endorsers all the. the it is in of hand of the he admits of endorsements of all above him, now if he sues in that case he ~~sues~~ proves his hand writing. but if he sues his endor. he admits all the 2 Ray 174 Stra 444, 2 Burr 655

If Drawer vs accept. he proves of accept hand writing, demand of payt by of Holder & yet the Bill has been returned the he can allege to pay it himself but he need not prove ~~the~~ his having effects in accept. hand. for the law presumes if the accept will allow ~~the~~ himself & accept.

vs Drawer because he had no effects in his hand he must prove Drawers hand, the payt by himself. & prove he had no effects. & this because the law presumes he had effects in his hand.

By Indorser vs he does not lose demand if any such but proves he has got to pay & does pay it but he was notified. & when he

Bills of Exch. Proof

has paid, it is he may sue any endorsers before him, & in order to show his right to sue he must show the fact by himself (3 Wils 18.) It is a remarkable case of adherence to technical forms. Here the man was taken & put into prison for debt & so he says "it worked a great hardship to me."

The Drawer is Drawer. Proved Drawer made & bill to a is bad before

The protest is almost most conclusive evid. of the existence of the case as stated there is no such thing as getting rid of it when it is once made — If it did be attempted to be proved a forgery of writing of Not. Pub. need not be proved but only that the man who became a signed is N.P. & this is done by the chief Magistrate. & all the rest of the answer proceeding falls into the Defts. & this is owing to the clog wh. will be thrown under the value of liberty throughout the Whole of it was allowed Gill L R 4 H 5 easily remove the protest.

When the jury is summoned & default is suffered by Deft let him be what party he will he admits every thing (3 BR 29. 301,) & there is no need to prove any of the hand writings.

In the Mercantile World it is a common thing for men to draw bills & notes in favour of another merely for accommodation. Now the occasion so they are negotiated they are good. - but after passing through many hands it gets back at last into the hand of B the payee he can recover notwithstanding the notice to the A owned him notwithstanding 3 T. R. 98, 1 Wils 145.

Bills of Exchange. — 3 A pair of cases was lately mentioned as regards giving or negotiating Bills of Ex &c. Lord Ellenborough gave way in a case where a Bill of Exchange was held without the law in London held not loose his money. In a case where a note of hand was given or drawn by A given a note of hand to B or order — the endorsed to C. "It was no matter it was B lived in Bristol not so!" neither of each other. and they or rather the note became due C sent his servant to A for money — A was not at home but he left word for A to come & take up the note he did not come. C sent the next day he was there this forenoon first in Liverpool he did not. he sent for 3rd day A was not home. C sent to B & Indorsr & they were ready & A sent to Bill was dishonored on the first day for he might have paid it on the first day — It appears that was no particular time. but after this was the case we occasioned such a great dispute between the Ct & jury whether it was a question of Law or not — there were two juries on one parallel & a trial was granted it is now settled to be a question of Law for the Ct to Decide 1 Bl 169

Q. Quest has been much agitated as to the extent of the rule of Factor has a lien upon all the goods in his hands to answer the debt owing by his Principal. The case was this: Prin. had a Factor in a foreign country who sent his goods to Barclay & the accounts were kept by him & the Prin was in the habit of drawing Bills

Bill of Drawer may be sued immediately upon Notice upon 3d refusal of acceptor to pay it

Bills of Exch. Factor &c. on his Factor - A he drew one pay
ar of d avoils of the goods at this accept. & c. King said
this was a good contract - the Factor he accept'd
the Bill but his prin. had become a bankrupt
in d mean time so refused to pay it as he was al
ready under heavy acceptances & tho' if not d
he had obliged but with suff. funds of his principals to
answer his own debt. but not so if he paid the Bill
Hence decided the that A Factor accept to bill
according to d tenor of it, he will be obliged to
pay it altho' his prin. ar. ares him - for if he had
secure himself he shd accept it specially
1 Str 269. 2 Bl R 1070.

The Medley

Several subjects wh. I shall unintentionally - so I will notice them now

The Law as it is in Eng. but we adopted as colonies are is not the L.M. generally. but it is a custom

now When a man has refused to accept. In most parts of d Mer. World if d Drawer will give ample security that he will pay the bill at double the time it is payable at, he shall not be sued

But this is not Eng L.M. & we have adopted it. Lex
It has been cited in Gill L.R. 114. that this is d Eng L.M.
he took it from Molloy 284. who wrote on d L.M.
generally. But as to the Law as it now is see Doug Mis-
ford vs Mayer

Pothier 1805
1908 40 v. 1 1b 938
1 1432 612.

Bills of Exch. Bindley } A rejection in the Court in contra opinion. It has been contended & decided so in some cases. If the Drawer or Indorser has actually become Bankrupt there is no need of giving him Notice & the ground of the is and do there no good as Brown Ch 1. Cooke Bankrupt Law 1788. but the contrary considered as settled Law

The absconding of the Drawer & he has left no one to manage his business will excuse the not giving him formal Notice Esp N.P. 516

A sudden Death or sickness of a Bold will excuse ~~[illegible]~~ immediate Notice but it must be done in a reasonable time after death or recovery - Chit 279.

Formerly after Verdict there was a judgt by Default the mode of ascertaining Damages was by Sheriff summoning a jury, & this is now sometimes done - In K.B. they dont do this but refer it to a proper Officer. (Clerk) In this country I believe the States generally pursue the old custom but it was never adopted in Eng. the Ct do it by their Clerks 4 JR 275, 1 Wil 262. 528, 541

There is no occasion to prove the Bill in case of defaulter & so there is no need of a jury & still if there is any dispute about a part the same reason for the jury surely subsists - but this is all done by of discretion in Ct & so a jury may be called (3 JR 301. 1 B.N.P. 278.) for the default does not admit how much is due, but only that something is due.

Bills of Exch. The Medley } Notice it seems must be given in a particular manner on ye dishonor of a Bill. Ths requires an allegation & the quo modo of dishonor should be stated, as by Protest. There can be no Prom. notice without a Notice, or ye verdict does not aid it —

This is a point wch has been much litigated — but there was no reason for it, for if Defendant pleed "non apt" when he shd plead "no Notice" — it is no ye they shd find he "did appear". They find Notice but this word is fallacious — for in an action if they find a promise they might as well say they also find consideration but if the Notice — & case alone is alledged if they find he appeared they find ye Notice — for it is an allegation, & Demurr the Ths allegation being laid in form (wanting ye quo modo) and he had on Demurr but not after verdict Rushton v Aspinall Doug

We have a law in this state if ye a Bridge is bad & ye town passing ~~may~~ gives notice to ye Select men in writing, the town wd be liable if accident shd happen ye bad state of the bridge, but suppose they had notice & so laid, but yet had it not in writing the Defendant wd be good after verdict but bad on Demurrer.

This business may all be done by agents but there is some diff in defining their authority & this authority is, ye man himself is by power of Atty. & ye act done by Agent is not within the power & principal is not bound — tho as in ye case of a man having a Factor abroad goods Factor bes anc. to do every thing wch the principal can do himself. Now if he had no anc. to sell a credit

Bills of Exch. The Mirby & Ogden

and if the std sell, no one is required for the purchaser holds - for it is presumed he had authority to sell on credit -

A employed B to get a Bill discounted but told him not to endorse it in his name - B took it into market & d Manwaring to purchase and no purchase unless B endorse it & so he did. Now here is a strong argument to be drawn from the case if B had power to endorse & so all things are usually done in such cases. the Ct held prin. not liable -

A second trial was had - & it did not appear that there was any such restriction as above was laid on him & then the Ct held he had an implied authority to endorse 3 Esp 787.

Agent & prin. is not always an esp. if the usage of trade is suffi. as in case of Clerks & custom of endorsing &c -

Agt. if it is not the custom this particular agent has been in the habit of doing it - the principal shall be holden by the act Beawes 86.

In a case where really there has been no auth. - if the prin. afterwards assents the subsequent agent binds prin Beaw 291

A Manles employed an agent to do a business for a certain ~~interest~~ time & he does it 40 times. A Master shall be liable for the 41. Now the connexion dissolved. & if he std do the same business after notice has been given. he shall be liable, Stretch it is prov. indeed notice must be given & the publication in a N.P.

Bills of Exch. Medley } is not of itself suffit. to sue out
~~have~~ (9 Co 74) that the cred. took the better deed.

It is very difficult to state the
cases. And each all must depend upon their
own peculiar circumstances.

A man was arrested
for debt & he gave a Bill to cred. & he released
him & Bill was dishonored. The cred. took Debtor
out of gaol. Was, was the second arrest legal?
It was decided by L Kenyon — & he want any of
ground & it was a case in wh. he (Defdt) had no auth.
to give a Bill & the Bill it was to be dishonored &
ergo no fraud. As much of arrest was legal
Creditor & may had a right to draw a Bill
this did not be the effect 6 DR 52.
The same inst. cd be used in the second arrest as was
used in the first.

Plaintiff lose that if any of the parties of yr Bill
become bankrupts the Holder may prove the debt under
the comm. but it has been contended that the cust
takes a fest from the acceptor, without the consent of the parties
unless he sets the note. It is a qu. act. but it does
not in bank. because if he is willing accept stand
by the act of it, it is a benefit to the parties —
If he takes a Bond from accept. he surely stays on the
Bill & ~~his~~ own Cooke 1 Ch. L Ray 744. Stra 745; 3 M & S 271
&c
for the case of taking a Bond, it is giving accept credit
(3 Mod 87) & a length of time to pay it in.

It is after
the case of Ld Ellenborough to prove the custom

Bills of Exch. } If merchts & some time they reject them. It depends upon this - if upon the custom is particularly they may be admitted, but if it is of the general law they will not be admitted
But if the custom is particular it is very well known they will not call in their merchts.

It is said that when a ~~accepter~~ Drr accepts a Bill on his best he admits that he has assets in his hands & he can never afterwards plead the want of assets

Inland Bills

There are no particular mode of notice pointed out for Inland Bills of Exch until 9 Ann (which we have nothing to do) - & this Act only affects them so that if the Ld notice is given the Hold is entitled to & the damages it is not a cure if the notice was by a Ch & the Hold & Mod v Ld Ray 992.

What the putting of letter into a office & he does not get it, has been a great question whether he had notice of it, it is now settled to be notice to a Holder has done all in his power

A Bill of Exch may be sold like any other article out & out. & a Holder has no right to call upon him afterwards.
Now if a seller knew it to be of no value the seller is liable on a ground of it was a fraud & the general rule is that in such a case of concealment or culpable is lying about it -

The old act of parliament ~~is not now~~ is not pursued & the dam

If there is a clause to the effect that on failure to pay the first instalment he shall recover the whole – I have no doubt he can recover. But not otherwise.

Bills of Exchange — Damages must be recovered but I don't think this an principle for there being a fund that ought to be well found 7 BR 497.

Bills or Notes Payable by Installments

It has been a question — whether when a man sues on the first installment has not been paid, the bill should be recovered in toto

It has been said if 1st installment is not paid when due sues. the whole debt ought be recovered 1 ABR 545. Cro J. 505. Cro Jac. 370. this is opposition to rule on order above

Difference with respect to recovery of Interest at C.L. & Law. At C.L. is that if money is rec is of court about interest. the interest shall be calculated after the note has become due but by Law has right of Interest, accruing without demand. The reason is in mercantile transactions there is no right to sue without demand, but at L. there is no need of this demand notwithstanding the declaration says "often requested & demanded"

As I told rule and to be for Interest to stop and commence at suit but now I don't go down till day on wh judgt is determined Burr ~~[illegible]~~ 1085.

Notes are sometimes in the same words as joint & universal. being but a words varied. this if it begins "We I subscribe" — it is joint. But if a person signs a note begins "I I subscribe" it is several. When I note is gt. upon must

Bills of Exch. Notes & all. but if the Note is ye Present you must sue either on or all. or you please if there Note & distinctive letters Parts of Contract, you may sue any one or number of ye Parties & neglect the others, but ye Contr. they all must be sued

Qu. v. the effect of Endr. of a Bill of Ex. can restrain its negotiability now supposed D. filled it up to Pl. in such a manner as to "Pay this Bill to P only" & P. agrees to & he and he bound by it — the idea was once contra but now a Bill can be negotiated no further

The opinion

Lee obtained judgt against several persons as a Stockholder & Recept Dem & Judgt. It seems to have a right to take out Exn against all their bodies at once but he cant take out Exn. against all at ye same time, why this is I cant see (Star 5 15.)
Now they say the bodies of all are a security for the Debt but is not the Body some a suffit satisfaction?

No. 14

Difference of the C.L. from the L.M.

1st There is an entire diff between the C.L. & L.M. as to Choses in ac. – at C.L. a chose in ac. cant be assigned, But suppose A. sold sell a horse to B. & the covenant that he wd not impede him, (B) in the coll. he cd not impede him & therefore when there was a sale of a chose in ac. Equity introduced the Rule – that is the obligor shd pay the money to obligee after notice of the assignt. he shd pay it again to assignee

But in L.M. those inst. which are mercantile in Nature Bills of Exc. Bills of Lading Policies &c the rest the property in & hands of a stranger & he can bring a suit in his own name, & he has a legal as well as equitable prop. of & Bills &c. – & L.M. raises a cont. where no more lapse

2d Another good reason of diff. that cont. not specialties or not sealed, could have its consid. enquired into & if there was no consid. there cd be no recovery But as soon as the inst. is negotiated the want of consid. cant be enquired into – for in this case the design of the cont. was to raise money, & in this case there can be no more of an event that there was no consid. than as to a specialty

3d No illegal cont. can ever be recovered upon at C.L. but at L.M. if it was once illegal but has been negotiated & held in a cover unless it was ordered void by some St. in such

Diffce of C.L. & L.M. Here there can be no recovery. as in the case of Usury & Gaming act. &c. here the strong strictness of ye Act declaring them void to all intents & purposes cant be got over

4th Argt. There are some cont. at L.M. wch are good & binding altho there is no consid. at C.L. & this is merely for the purpose of advancing commerce — thus in the case of a man accepting a Bill of Exch. for the Honor of the Drawer or Indr. & the acceptance (the Bill being protested) raises a cont. between the accept. & the person for whose Honor he accepts. & this on account of the hardship, wch is the consid. at C.L. you can not reject a man's gratuitous kindness.

But there are cases wh. there is no consid. at all. & where a third person is concerned. One of a Merchant writing & promising to accept a Bill in the strength of wh. letter the Drawer obtains money of a third person the acceptor is bound altho no consideration. And in all cases of Mercantile instrs. being good without consid. is where there is a third person concerned.

5th Argt. Diffce as to the remedy in case of a fraud. hard at C.L. if a man buys a horse & he unsound the process is to sue him for the fraud & recover your damages, but not retain the horse. But if there is a fraud in the execution of a cont. by deceiving a third man so if he gives a bond for 100£ wh. he intended to give an for £10, it is totally void. Law of fraud is in the consid. is clear — but Chancery assists always if the cont. is about real prop. wch. the

(a) or if there is any thing equivocal, or any circumstance which the strictest integrity would not sanction, will render the contract void, —

Diff. of C. L. & L. M. } Cont altogether. But in L Mr
the fraud in the consideration however minute it
may be, avoids the contract altogether — the
man is not driven to use for the fraud.
It is true the Man is not obliged to disclose his
own private speculative opinions tho he is all
the facts — as he goes to get a repel insured
& he thinks the Nation is on the eve of a War he
need not tell the insurer of his opinion but if
War was just declared & he went to get the Pol
icy he must tell the fact on the Policy and Insur.

I do not
know that there is a Slit in the Union except
Con. where fraud in the consideration can be made
use of to set aside a contract. & not even here unless there is no consid^n
at all; or the consid^n is mere "moon-shine" 4th A & C L if you
get an execution after judgt at suit A B & Co. & you
find that A is good & then let him out. It is a dis
charge of B & Co. Lees at L Mr tho you may
let one go & then another until you get the debt
the Ct goes on the ground of the debt is paid — but tho
not so at L Mr.

4th Bynd Rules of C. L. cont^d by the prop
is to be conveyed & consid^n of some third person (as on allg^n)
the prop. is considered as conveyed & vested ~~in~~ the prop
But by L Mr if prop is thus took & pay made by
note or Bond — yet if the person of whom the goods
or bot paid the Debtor is liable to be, or is already a
Bankrupt. the Cred^r may stop them in transitu
tho if they are delivered to once into his (Debtors) possession then

Diff. of C.L. & L.M. as an end of the affair -

8th A Month of L.M. is a calendar month. of C.L. a lunar month.

9th The L.M. excludes the day on wh an inst is made in all cases but C.L. - it sometimes excludes & sometimes includes the day.

10th Merchts are mere joint tenants & there is no jus accresc. under - but d. Exr of Deceased Partners take the prop. as tenants in C.L. as it regards persons not merchants.

Nuisance.

The first ob object is to pt out - wh act of nuisance as it regards real prop but I will go into d. subject as it is but short.

A Nuisance is something wh annoys but the ideas are not precise idea - It must be an annoyance wh is consequential of a wrong & not thus of a right act. Now this last is an act wh you cant use a thing, as if he raise a dam on his own land - he cant be sued for it tho' it flooding nothing back on to neighbours land he can be sued - this is the consequential damage - this is the same as a stream of water running thro' his land into Ds & A digs a ditch & turns the water in his own land. No this - but an act on d. case will lie for d. diversion of d. stream of water of Co 101, 2 Roll 140.

Nuisance } Building so near as to stop antient lights is said to be a nuisance - the rule relates to the country more particularly & as to what is an antient light has been a quest L Mansfield says if the house has stood 20 yrs it is enough & air will lie 9 Co 50. 1 Vent 237.

The erecting offensive works as tan vats. tallow chandlery &c called a nuisances but if a man shd set up a house by the side of the vat &c he is in his own fault - but if a tan-vat (Hob 235, 9 Co 59, and Cro 10) shd be set up by the side of his house & air will lie (Palm 539.

Corrupting a stream of water as by a tan-vat it is a nuisance, but this depends also upon a prior occupancy.

All the doctrine as to diverting of water out of its old channel. this idea is to be connected with it. that no injury is to be done to another & a prior occupant by the diversion thus a man may set a mill above another & there is no nuisance to take away the custom of the other but must not take away the water -

But it is a custom in our Western counties of giving land to erect a mill & that if a northern man shd erect another mill in his neighbourhood so as to take away his custom it wd be a nuisance - this is an acknowledged rule as it relates to a ferries - if another erects a ferry near it is a nuisance

Conde 10

Nuisance

The person entitled to sue for a nuisance of an real estate is the heir, or heirs or his or their inheritance (4 Burr 2141.

If nothing is injured but the crop & land alone has the right of action 3 Lev 209.

In the act of nuisance you recover only up to the date of your Writ — this diff. from act. of Batt. & Slander, — for here if the man continues the nuisance you may sue him every week Cro J 373. 1 Sal 460.

There have been attempts to make it a nuisance to interrupt a man's pleasant prospect, but it has never been held that it is a very unneighborly act, to to

Remedies

The old remedies are done away, but the act and case will be other as many other, & every body has a right to abate the nuisance i.e. throw it down — & this is not a case where one needy lay selected you can't choose another

If the nuisance is what is call a public nuisance, you can not recover unless you have received some special injury. Cro E. 185.

A man may abate a private nuisance as well as a public

Suppose a man is indicted for a nuisance — here the nuisance may still remain but he is liable to another indictment — but if it may order the sheriff to go & pull it down at the expence of the man

of him who erected it - & thus in addition to d judgt

In an action for a private nuisance the pltff must prove his right to the thing injured and also that it was injured

1 Shor 356

Prospective if it is injured creates this title to establish a right of action

A man diverted water which used to run in pipes to d house of his neighbor he diverted on his own land to his own house & house & acc.? held both bad - A landlord did here & L Ray 1668.

No. 1.

Criminal Law.

This title is so very extensive it is impossible for us to treat it as we have other titles, without incurring a great waste of time, We therefore shall not go into the crim^l codes of the particular States of this Union — But only give the governing principles of the title — or rather lay down the Law as it respects some of those crimes, which are every where treated the same

There are some prin^ciples of the Law with regards crim^l Law wh are universal; & they go thro the various States & prevail in Eng. there to wh we have reference are those crimes wh are capital — these prin. are important.

A Crime is said to be an act committed in violation of some public law forbidding the act — or it is omitting some act wh the law requires to be done

Misdemeanor is com^n lang. meaning to mean something less than crime still some of the worst crimes are thus call'd — but every crime wh has no particular tech. term applied to it, with regards to public is call'd a misdemeanour — as, an attempt to commit murder & this is a subject of indictment — & this requires an overt act in an attempt to render it criminal for an indict^t can never be founded on an intent — to murder — & this is properly a misdem^r

Ag^n When a St requires something to be done & no penalty is inf

Crim. Law. } inflicted for the non performance of the
Civil steps in the punishes the breach as a misdemeanour —

There are
many cases where a act is committed agst a private person — here the public as well as the individual have a claim agst the offender — the public demand yt punishment the individual this damages. As in case of Riots &c. & therefore the individual has a right to a pros. independt of yt public &c.

We find yt in yt Eng. Law there are many crimes committed which injure a private person & for which there is no remedy for the private person. here it is sd the public offence is so great yt the private injury is merged in it.

The prin. on wh this proceeds I suppose to be this, that it is agt reason — for if a man can make reparation to yt injured why shd he not do it? The ground is. yt these offences are merged are all offences where by L. L. punished with death, forfeiture of the chattels lands real & pers. — in fact they are felonies — & therefore yt being the case when wd be the grounds of a remedy? for yt public want the body of yt offender to be hanged & the King has his est. — But this prin. does or rather cannot be applicable to this country for in all the States of yt Union these crimes are all meliorated, & there is no such thing as attainder &c. therefore the remedy may be taken out of the offend. prop. — Some of the old Laws are still existant but they are but few indeed.

So in the Books we find that if there is a crime committed as a Battery & Riot & where the certain was not forfeited as well as the man hanged the recovery cd be had.

(B). The object of Capital punishment is two fold - to deter men from committing crimes & to protect society by cutting the cruml from Society —

Crim. Law } There is an alteration in the Eng Law with respect to many crimes which were punished with death at C.L., for now persons are often allowed in such crimes the benefit of clergy. The origin of it was, to ameliorate the rigour of the code.

If then a man was a clergy man - they give him the benefit of clergy - which was a pardon for that offence the was the first state of it & if a man could read he demanded the benefit & the reading was the proof of his clerical character at length this got to be universal & the many laws were made restraining it but in the female reign of ~~Ann~~ this benefit was extended to females.

The crimes are divided into crimes mala in se & mala prohibita

The crime mala in se were such as did have been crimes in a state of nature

The latter those which would not have been crimes had it not been for the L. as the land of all men shd be buried in woolen

The end of punishment is to deter others from committing offences & not to reform the criminal - but so much better is that mode which is sufficient never thinks reform is a design -

(h) But it is often necessary to cut a man off from society lest he shd not be done were the object of the law to reform

Most of the crimes are punished by D for the C.L. punishment are not usually sufficient. The C.L. punishments are fines setting in the Pillory &c.

When the subsequent St is severer than the C.L. it does not repeal the C.L. but

If there has been some circumstances, which have arisen from the parties own fault which prevents the free exercise of the will, still he is not punishable —

Criminal Law { leaves it to the discretion of the office prosd to prosecute at his will — But if the St is once repealed for the C.L. the C.L is repealed — & the office can not prosecute the C.L. — & this is on the principle of that the prisoner must necessarily —

There was a St wh rendered Blasphemy criminal when the C.L was but a fine — & it is said that from the time that act enacting it of the until its repeal there was never an indict on it.

If an indict is made on the St when there is a C.L remedy — & the indict cant be supported on of the St still it may be a good C.L indict. & the prosecd may be provided with & the crime be punished by C.L. Case, of the time of the St having run. or it requiring more witnesses than the C.L.

Who are Exceptd.

We now come to the law respecting those persons who are exempt from punishment for those deeds for wh others wd have been punished had they done the same thing.

1st Those who are under some derangement of mind. for the Law does not punish except where the Will is concerned — or where the Will chooses to do what it ought not to do — & vice versa the Law permitted

On this principle it is of course the Law has provided — & those persons who are not under the influence of a reg. understanding are not punishable — the other are now excepted

Crim. Law. Excep. Pers. } Exceptions are where the policy requires it — or where there was compulsion or command to act. &c. There is this place

When there is a deranged or ~~nice~~ understand. to act is not punishable — to the Law requiring the act, Will & the act, or not to ground a punish.

A Vicious act without a vicious act is not punishable — or vice versa — And if there is a constraint — or wholly ignorant of what is done there is no crime.

The Idiot. & Lunatic commit no crime — tho there is a degree of derangement which will render him punishable — as if he can distinguish right from wrong. And as near a degree of the derangement the Laws have been provided for these cases.

There is a want of discretion sometimes where there is no delusion — as in the case of Boys under 7 yrs old. here the enquiry is not gone into to enquire whether they know right from wrong for this is a presumption of Law which cant be gone into like a presumption of fact — This by the Civil Law is call Infantia — & Between 7 & 14 it is call Proximia! — & then liability to be punished 2d by law and instead by know right from wrong & after this age of 14 punished. But there are some crimes for which they are not punished — but this is a doubtful age — & therefore we are to enquire into it —

Ex. Lawd. Except. Per. } Except. It has been observed that there are cases where men must be punished for crimes under a derangement of mind — as in case of Drunkenness. Now how is it that they are punished? — The truth is there are but exceptions to the Rule to where a man by a vicious course of life has brought insanity upon him he is punished — but if a drunken man commits murder he is punishable — otherwise men wd get drunk to commit a murder — And this drunkenness must alter the punishment or the effect of it —

The maxim of Justinian's code is qui delinquens iniuria culpatur non est. — It has not been thus got along with — may

When the thing done is not by the intent of the doer — no crime — But here is a distinction that must be supported well — It is yet if a man committed what and it a crime is crossed but against his intention. If he was in pursuit of a lawful act it is no crime but if in yet pursuit — an unlawful act — it is a crime — Case of shooting a partridge & shooting a man — But if he went to kill his neighbors hen, & that a man it is a crime. Now here the mens rea is as negatory in the one case as in the other. but it may good policy notwithstanding

The Lay.d makes a Digitary ~~[illegible]~~ Not if he was pursuing ~~[illegible]~~ act wh was belonging & he did kill a man it wd be capital — but if he was not in pursuit of an act wh was not lawful it only a Trass. — but ite is not murder if alto ere

(g) The act will lie agst servants but not agst master — tho the Servts have been an act agst the Master for sending them there, if they went that of grain under the impress that it was ye Master's.

Cor. Law. Excep. Pers. Exc. } When the man is ignorant of what he was doing as in the case of a man breaking into house, & the owner of ye house killed one of his own family instead of one of the assailants — there is no union of a malicious will & act

The allegn of civil subjection will not excuse a man of the crime before any human tribunal — altho in the case of a law being made wh ought not to be obeyd & in obedience of it he commit what wd be a crime there is not guilt — So in case of ye enemy getting possn of ye country & compelling the people to serve them — it is not treason — tho if they voluntarily enter the service & commit an injury upon a neighbour — after the enemy or yon the air may be restained by injured.

A Lieut cant excuse

2 himself for committg a wrong act by order of his master — nor tho it appears he did it — against his will & tho with the exceptn of war is an universal rule

Except in the case

of Wife there is no excuse for ye commission of the crime unless it be when under public restraint. & there is no remedy in such cases, — but if a man had a forged warrant & took a person & call'd others for assistance there is a remedy against the man who bore the warrant, but there is none against ye assistants: but in these cases ye assistants have a remedy against ye Officer

(9) And so in the case of servants going by order of their master into a field of grain —

But with respect to ye wife, the Law is singular & diffl from any other which exists in society —

Crim. Law. Par. Excep.: It is supposed if the acts under coercion of the husband is deemed the coercion be if she commits a crime in the presence of her husband it be a priori here or does not restrain where she is excused.

But two Exceptions to the Rule. Reason of the keeping a hotel. The first is an offence so dangerous to society that her privilege must yield. After the other she is supposed to be have the prin. management.

But for crimes mala in se she is liable even if by the coercion of her husband. But if it is a crime under the coercion of her husband she is not liable if under the coercion of her husband.

In some of the Books it is laid down that if she is in the presence of her hus. she is not liable but there are no cases where she is not liable - but where he is punished - so if she should steal upon from the table when they were eating together it wd be strange if she shd be considered the thief.

But the Law requires him to be so present & allowing of permitting the Wife to act.

In the case of stealing to satisfy hunger - there is no liability - it is committed in bono hominis - & it is best it shd be left to the mercy of the crown; & policy requires it shd be punished. That is a crime in bono conscientia I dont claim it is. but policy requires it to be punished, or the permission might be made a bad use of.

If then the performance of the act it is necessary for a man to be present. he alone is a principal who is present.

Of Principals & Accessories

There are some crimes wh can have no accessories. as in Treason - by this act of 25 Edw 3 & Ye Statute every one who is engaged is considd as a principal. In some cases of this. — But there are intermediate crimes wh have accessories

A Principal is the person who perpetrates the act. & any one who is present in aiding & abetting. is also considered as a principal

Then the Ques. is what is "presence" & this is the case in all cases where a person is engaged as in watching to see that no one comes. he is considered in Law as present & ~~present~~ principal Hale C.L. 615. Foster C.L. 350 says does not mean bodily presence

A person may commit the crime & not be present at ye time as in the case of poisoning or setting a trap - turning loose a wild animal now the person is not here present at ye time of ye injury sustained while he is a principal.

If then this is ye presence meant in Law. any person who is engaged is present

There are two kinds of accessories. to wit access before ye fact & access after the fact — there are not present. This if an person advises another to commit a crime - he is an access before the fact

Cr. Law. Principals & access.s } Question here arises on the subject
when a man orders his servt to murder a man — & the servt in doing this, did it so thoroughly that the man injured died — it is now decided that servt was access. — but had the servt after murdering the man done that he further took the watch, not advised, have been access.s? So here is liable only for the probable consequences — directly springing out of the thing advised

Obs. If servt pri. acts thing is done wh is advised to be done but not in the manner advised the is access.s is when the advice was to stab, person was adopting — the first access.s (Hale 615 &c) the murder, not the manner is not material.

Now here had the man the present had been principal but the advice merely makes him only an access.s

Access.s after the fact

This is when a person knowing the fact conceal the perpetrator or aids him in any manner to effect his escape from the pursuit of Justice. But it is not every act of charity wh may be done under the render the person an access.s — it is only when aiding him in the escape — for if the criminal did be found in a famished state — it is not access.s to afford relief.

If he receives the prop. acquired by the act he becomes an access.s after the fact — but this was not so by the C.L. but was so ordered by a very ancient St

Crim. Law. Access. } Land by mod. the murder thereby
Petrel 2 Hale 319. Hale 618

But if crime must have been completed on the person aided does not become an access. — Here there is guilt but he is not punished as an access. Now if A wounds B. of wh. wound B. dies & this is murder. & before he dies C receives & conceals A. altho' it is a crime for wh. he (C) may be indict. still he is not access. to the murder —

There is an exception in favor of the Wife — but not the relation is allowed to assist the crimt. but the wife not be an access. the act not be crimt but she can be an access before the fact. She may receive her Husband 2 Hale 320. 1 Hale 621. The prin. & suppose is if she is compelled (forcing) to aid the Husband in case he is guilty but what if (cut off) but says if guilty I see no reason why the ~~Judge~~ Lady might not be permitted to protest be merciful if she was not the prin. altho' if failing was admitted to form the excuse

There can be no acc. of div. the case of M. S. for there can be no pretended intention for if there was it would be Murder

The prin. of C L will permit the access. tho' the prin. — but the have altered it — & it is necess. to prove the reason

But here the mind in the prin. must express the particular circumstances on wh. the guilt of the access. is indicted. for the access. must be tried as a principal. a fortiori the prin. must be tried before the access. — you cut by the guilt of the chief help the guilt of the prin. & detour

Crim. Law - Accessories } But if a man shd be tried as an access. he cant be tried as principal but if he has been acquitted as a prin. then a p. be tried as an access. after the prin. has been tried & convicted, - for the reason that his being an access. may have been of cause of his acquittal

We now come to the Law as respect particular Crimes & when the C.L. precedes or there are no great variations made by the Diff. States. & the C.L. is of bars or rule the indict. proceeds.

So that in the cases following the crimes in the new tho' there may be a difference in the punishment.

Arson.

Arson at C.L. is defined to be wilful, malicious burning of the house of another. It must be wilful, Dam. that is to say "Disgraceful done for if it was negligently done it wd not be arson. It must be maliciously done - in this sense it wont bar, it does not mean merely done out of ill will but it must be done without justifiable or excusable - Malice prepense or aforethought - for murder is committed to get the mans money or ill will is towards the man kind wd & that as

(C) But I believe there is no Statute has made it arson to burn a barn unless it is filled with grain.

Arson } The universal meaning is burning
It is little expressed by the Latin word Malicia
A must be done malo animo So that here the
means the wilful burning of the house — here
of the arson a felony — on the word house in of offence
in of [illegible] Or the Latin is in Domus
it means a Mansion house — So that the
burning a house rule is not a dwelling house
it is not arson (1 Hale 569.) but the house
altered by the.

Is it the not arson to burn out
houses & it is so if the out house is with
in the curtilage, Also is considered as a part
& parcel of the house & the C.L. construc-
tion — for it is too to one but the dwelling
house will be burnt by the burning of the out house —

But the is by & in many
(c) of these Statutes the burning out houses which are
in the fields for instance we made arson

By the Eng
law it is not arson for a man to burn
his own house. but of St of Con. has not the words "of another."

But in Con there has been a decision
in the Sup. Ct. that it is not arson for a man to burn his own
house — & this I suppose is the C.L meaning the
are the two left the entirely out 1 Hale 566.

But in
Eng. the neighbours house is burnt by the burning
of his own house but in this case the burning of
his own house must — have been malo animo
Law C 377.

Arson } Eng decision on this point but I supposed it ought to be otherwise upon the Lefr did burn up his house or suppose the Lefr did burn it up. now the decision have been diffty but in my mind it is arson (see that C.J. had arson) in both cases of done malo animo. It is uncom long. the Lefr house it is. also, the Lefr house for it is his dwell house

If the fire did be put out it wd be arson for the intent was to burn — there is one case where there was but one single barrel & it was held arson & I think correctly so decided — Another case in this State where the fire was in, but a little way it was also held to be arson

A intended to set fire to B's house & set fire to his by mistake it was arson.

Eng C.L

the prisoner was tried with benefit of clergy without benefit of clergy the same is house of three stats but is other perpetual imprisonment 2 Ms Stats. If there was any one in danger or is death but if not Mere Gate

Case in N.J. a town set fire to wh was out of yr curtilage — the law is if life is endangered — dwell the burnt the qur. here tend or wh way the wind blew. for if the wind had blown one way it would not fire to the dwelling house

The Law in Ger. if a life or lives are endangered by the fire — it is arson & punished with death but if life is not endangered, Mere Gate for life is

Burglary.

Burglary is, the breaking & entering a mansion house in the night season with the intention to commit a felony.

Then there must be a breaking — an entry — a mansion house — in the night season — with intent to commit a felony — of these in the order.

Quite here mentions what I told him immediately before —

Now what is felony in the U.S. we are in a singular predicament. At C.L. it is the felonious taking of goods & chattels — & what this is the punishment is then felony but this can't be the meaning here but it does mean that whatever in Eng. takes this name, is felony with us. & all are indictments ~~are not~~ in the phrase. Tho we have not the punishments of the times — & Burglary is one of those crimes

Night Season — If it is light enough at the time of breaking to discern a man's face by the light of the day it is not Burg. It is not because of the light — for the face might be seen by moon light — but if fair is that the people are not a bed & asleep when you can see by day light they are not in dan gerous — (see 7 Co 6. Moore 660, 1 Haw 150. Cro L. 589.) or assistance may be call'd, &c.

Burglary } A Mansion House must be broken. It must be a house in the person dwelling of no person dwells there. It is not Burglary It must be a house in the same or dwells - the Star chamber not inhabited if broken is not burg. at C.L. But so much for a Church is Burg. then this did be add'd to the def.n but Cole says it - is the mansion house of the living God. 1 Hawk 102.

But if house is sometimes built in & sometimes not - it is Burg. notwithstanding - the reason is not the houses are usually left with furniture in the & then is no keeping it but there the nearest or away return & the a no reason of lay sen-tences in favor of rogues,

& if the house is within the Curtelage - it - is Burglary

And if the house is within the Curtelage it is not Burg. the in law it is Burgly if the build'd has goods in it. & then had law so much differ in the decisions we settled it that. any thing wh. was built a repository of goods of any kind, & for the protection of goods it was brought to be built in (Co 40 Kee lin 27-52. Pop. 42.)

Stone must be a Battering - not a mere legal breaking in it amo, as if entry by trunk & gt by wil, the door being open if the door was open or under ... it - is legal but if not burg. but will be tres. to enter but if the door or window was shut & upp 1 Hawk 102. So if a mere ~~to~~ raising of latch is breaking

Burglary. } But if a man goes down chimney it is breaking. Kelling 52. But 20. Cro C 65.

A person may be let into a house while it is breaking, or coming or knocking. As to the question who is the any friend to be received it is the fraud does not help it — so when a constable was procured to go — and in the imposition of a riot ling the — so by combination with some of the inmates of the house

The must also be an entry — & this is answered — by putting in an arm or stick to put down or to take it — and be an entering —

There are some very nice cases as to entering, as the door being unlocked & the latch key is — was held an entry. Stepping on the sill with one foot to put a hand in it was an entry. ~~Any thing holding of the pistol the muzzle part out of the window~~ Kel 111. Sta 8 84 — Any person watching without to hinder the person from alarming the robber is entering. The holding of a pistol at a man in the house thro the window — part of the pistol being put within the house — I was held to be an entry Kel 111.

It must be with intent to commit a felony — And is not necessary the felony be committed — Then a case where a fellow broke open a house to get to a woman no felony — 2 Burg. Shen 53 — Sta 481, 1 Hawk 164.

The punishment to be C L is death without benefit of clergy — but in the county

on rainbow, in some state, dead,
in Cor Mer gate to 3 of to 1st Ave to a' Ave. of let,

Perjury

Perjury is, a false swearing, wilfully on a point material in a cause, by a person under oath, relative to some proceeding in a Ct of Justice

The Oath must be administered by a person authorised to administer an oath

A person who commits perjury must be under oath - administered by a person authorised it must be in a proceeding in a Ct of Justice - on a point material on falsely meaning - & wilfully so

A man may be guilty of perjury when the fact to wh he swore was true. as when he knew nothing about it, but it was as he swore - or he swore falsely because ~~the that~~ it was not as he swore. when he swore it was otherwise

He must do it wilfully - he may swear when labouring under some mistake or surprise - when the fact was contrary to his auth (5 Mod 250., 10 Mod 195. 1 Sal 519. 1 Haw 219.) & it is not perjury.

It must be relative to some proceeding in a Ct of Justice but it is not necessary that the oath to be given in, in a Ct of Justice as the case of depositions, which are always given in out of Court before a proper officer.

And so it wd be perfectly legal herein appointed to transact some public business.

Perjury } . If it is an affidavit which has nothing to do with a Ct of justice it is not perjury

So when a man is taking an office & swears to perform it faithfully it is not perjury not to perform it faithfully but it is a misdemeanour (1 Hawk 319.) for it is not in a Ct of Justice

It has been held that where a false oath given upon arbitration was perj. the old cases say it is not but the modern cases ruled it a Ct for that cause — this perhaps was not the opinion

A Promissory oath is not perjury if the promise is not performed. tho it is a breach of trust & an offence (Cro E 158. 907. 185. 609. 1 Rol. 99. 2 Rol 257) no any private false oath — perjury

It must be administered by lawful authority — so in case of arbitrators who have no authority it and not be a oath perj. to swear falsely — (4 Bl 137.) they must call in a justice or some one having authority (1 Haw 322.

It has been made a ques. where a Ct not having jurisdiction tho they suppose they have & the witness swears falsely — Now here the person administering had authority to swear him & the want of jurisdiction does not render him incapable of authority — the principle not does it do a new breach — but for the public safety & the pin is to prevent that offence tho it was made a quest. it was as a ground that the proceeding upon a Ct was a void one & no private injury was done but void it is perjury (1 Vent 281)

(a) The old books say there must be absolute swearing to make it perjury, under this rule a man might cover up all the perjury in the world, but the old rule is now done away, But if a man says "I am really at a loss" it really is not evidence - So of course no perjury. And so now A. & H.

Perjury } It must be false - It does not mean false in fact but false in the main i.e. mistake in the main - As the man may swear as the fact to be so when he believes it was so. or he believes it to be so & he swore it was not so. it is not perjury When the a man swears that to be true, when he believes it to be false (Palm 292, 7 Mod 222 1 Hav 322.) it is perjury.

Lord Ruls are laid down in the Book (b) but are now laid aside; As when a man considers it so to be, or according to my best recollection the man will be considered as swearing if the facts do not turn out so to be

It must be in a material - Some men in swearing will go on & tell a wrong story wh is irrelevant & in such cases if he means falsely it is not perjury - There was an old man in Rutland who told he got up - told his wife he meant to marry & went into the lot & got his old Mare & married if he cried

Stern & secretary

Was a perjury when in telling a set of circumstances with the view to be believed - & it is done with the intent of ingratiating himself with the Lecurer. it is perjury if the facts related are false tho' they have nothing to do with the main point. Cro E 500. 1 Lal 514. Cart 422. Palm 382. 1 Hav 324.

Her par

material but lies a gun -- it is not necessary for it to be so for material as to turn the question

Perjury } (L. Ray 2560, 8 & 9.) but it must be a willful & corrupt to prove the point, to avoid the pain.

Subornation of perjury is the inducing of a person to swear falsely & is punished like perjury — see what it is in 1 Bla 325

The punishment was mighty severe — but is now moderate considerably. originally — it was death. the cutting out the tongue but this did not last long — then banishment. at present this is fine, imprisonment & pillory at the discretion of the Ct as to length of time, & he can never exp be a witness if yet he is branded. he can make no affidavit, or even when his evidence is necessary for a recovery.

It is many of the Stats have given remedies even & also to the party injured. but the st remedy does not take away the C.L. remedy. Law of the U.S. the have prescribed the time of punishment, others left it — at yet discretion of the Ct as at C.L.

Forgery

It has been greatly altered the C.L. as to what is forgery at C.L. but this is notwithstanding it was forgery at C.L. but is so under yet St.

A C.L. is was altering or making any rec. or deed or will or another two minutes of a public nature with the intent to pervert justice or Equity

(e) By authentic matter of public nature is meant Records of Births, Deaths, Marriages or certificates of them or protections granted by Courts

1 Hale 333

Forgery } But many ~~may~~ acts have been considered as forgery to alter a private instrument

Records at common law, public are only meant by the C.L. Private acts of officers & the ~~head of the~~ judgts of courts

(C)

By deeds is meant all private writtn under seal but not wrote the writgs under seal, tho it is now an act pd by St.

Wills as respect the disposition of a man's property ~~Acts of Legislature~~ which relate to the public generally but private acts or acts to private persons - as the what are kept by the Vestry of the parish, as of birth marriages & deaths are not forgery - but the same under other stg forgery -

It can mention all kinds of writings & the says "any other writings". (1 Hawk 333.) the of an indr writg of the sister was Cro C 353, 296, 1 Rol 66.

I will give you Exam. as explanatory.

Case. A sells to B by a deed, & then sells to C. the same land & antidates his last deed so as to make it appear to have been given before the deed. Are checks B. the antidating is forgery - but the matter is done with the view to prevent justice & equity as it ought a forgery.

For suppose a man give a bond to another for money borrowed two months ago. As the lender ought to have his interest thy date it the two months back - There is no forgery for no interest is defrauded. & this is the time when money was to all agree, the Hawk 655, 759 as to forg

In the case alone of inserting a legacy when it ought not to have been inserted, it had no other effect than to give a man what he was not entitled to, to make an additional part of Will & was held to be forging. But in this case there is but an omission & it would be singular to destroy the whole Will on account

Forgery } Case. A testator in writing a will; without orders so to do gave a legacy to a person for whom he had an affection. He altered the will & left it out when read he gave market a forgery; there is no gus of it its lay a fraud & so much red set it aside. It was held an alteration of the will & so it was forgery as a forgery.

Case. A mans name was found on a piece of paper & the finder put a "Note" over it, with no design to cheat, it is no forgery. 5 Mod 66, 8 Mod 192. Lens if with design to cheat.

It must have a fraudulent view — as exemplified by the following case. It is very old case when money was borrow by the L. D. Vaughan at 4/6. he was to give a man 500 Marks & by mistake gave a bond for 500 £. the obligee set down & altered it to 500 Marks. The alteration destroy the bond altho' there was no vicious intent the court was, was it forgery. held not for it was not done with the intent to defraud, jurisdiction exist but to support it.

Case. Was charged with a writ when a man was to deliver 100 ℔ of meat cattle. & it was written beef cattle instead fat cattle. the man who held the cont' scratched out the beef & wrote meat, so it should have been no forgery. in the first.

Case. A man was desired to insert a leg. & left it out intentd. & read it as if it was in gus was not it forgery, it turned on point that the whole will was diff from what it should be as if he made another. when he had been made another the case was not decided. — but the a matter forged only the whole is forged only so it matter of whole will round.

Forgery } 1 Hawk 227

The punishment at C.L. is now
capital. Mercy in dispensation of it - when it
is death in ~~Engl. commercial countries~~ Engl. - But in
the Colonies it is not known for a long time after
for life. I don't know but in some states it is death
& so it is by Ld.

Robbery

Robbery is, a felonious, violent taking any
from another his goods or money - one mortal blow
small & it is also added that he is but in transitu
this is now added to the indict. neither need it be
found, & therefore I think it does not belong to the
deff.n The prisoner in fact defends upon his
It must be
a felonious taking - the taking violently and not
of itself enough - for he might do it under a claim
& not doubt animo furandi; but violence must have
used to the taking e.g. with out a knife & a knife
slightly is not Rob.y

This Violence is some act by which
the man sees his life is endangered either from an act
or words but indeed the man to give his purse
1 Hawk 147.

When the proof is once taken it can't be changed
by the redelivery. Case of the friend who a man gave
his purse who contained but a few guineas - & the Rob.r
the gave it
(the rob.d)
he the prosecutor it herself - the Rob.r may return

No 3.

Robbery. The act of taking must exist in order to constitute a robbery; Thus when a robber cut the girdle with his sword wh held the purse, & before he cd pick it - wh he was pursued by other persons, it was no robbery

The person who watches & aids is as much a robber as the principal. Thus two associates to rob a particular man whom they knew had money one watch'd the other went in search. - & not finding that particular man, he met both another & robbed him. The associate who watch'd was held guilty of the robbery.

By the defn.

It must be taking from the person, Now what is "taking from a person". Two or three persons come to a man & order him to deliver to them some cattle he had in an adjoining lot. It held it to be within the defn. for it was taking from his pos^n Sal 613. Coke 145. 1 Haw 148

It is true

it must be such a taking as wd make the man afraid before delivery, For if a man takes a watch from the pocket of another - slightly - it is no robbery for there was no fear - so when the man turn'd & saw the robber with the watch. & then knock'd him down, - it was held to be no robbery. same reason, altho the contrary was contended. - The taking must be the consequence of fear.

So persons begging - but leaving arms & by this means extorting alms, are guilty of robbery, for the taking is the consequence of fear. Foster 128.

A man in Cor. beat a door down with his head & then threatened to beat the house down with the same instrument, if they gave him no alms was sent to New Gate -

Robbery } Threatening to murder a crime upon a man, & thus extorting money was held robbery — the cases are where the man was innocent. If guilty I suppose it wd be the same. Keel 71.

No matter how small the sum is wh. is robbed. at C.L. it is punish'd with Death, 1 Haw. 149 and in most of these states it remains punishable with death But in Conn. if the robbery is effected without violence & arms it is punish'd with Newgate for years — but if with violence turns Newgate for life.

Burglary & Robbery are call'd Compound Larceny. & exclude benefit of clergy. Other kinds of stealing is call'd Simple Larceny. which is devided into Grand & Petit Larceny. Petit larceny is that wh does not exceed 13. and anciently the punishment for grand larceny was death for petit imprisonment — & it is singular to see the ingenuity of juries in saving the prisoners life, a case of this kind in for stealing several yds of cloth worth 11.

But now in genl the same species of punishment is applied to both, but in diff degrees. — — — — —

Simple Larceny Simple Larceny is the felonious taking & carrying away the goods of another not from his person by violence or from his house in the night season — for if it was either of these latter it would be either Burgry or Robbery.

1st It must be felonious — in done animo furandi — the punishment of wh is death by C.L.

And in petit larceny the punishment is

(a) So a man may take goods without permission & it not be theft.

e) A case occurred in this place. A man hired a horse to go to Gorhen & while transacting his business there was told that a woman in the other room wished to see him he went out, & found his wife from whom he ran away some years before; he immediately left the room took his horse & rode off. It was held to be no theft it being an after thought.

Robbery. Pet. Larc. } forfeiture of goods & chattels. To taking a horse with the view of riding & then returned, is not felony for it is not done animo furandi - but if taken with the horse it is theft.

When goods are delivered to another on a bailment - the Bailee may be prosecuted with a design to steal - it is theft - but if it is not prosecuted with a view, but is an after thot it is not theft. & the distinction was thro' the cases.

A man hires a horse with the object of going to Sharon & he goes & is found in ~~Sharon~~ Bailee & there is selling him it is theft, but if it was an after thot & this appears to be the case it is not theft (c) then must be an intent of stealing at the time of taking.

Case. A pair of sharpers fell in with a man returning from market & when walking out the next day one of them stooped to pick up something - the other called snaibs - they that it to be a diamond - & appeal was made to the jeweler who was in of secret - & it was pronounced a demon & found to be a stone only - the stone was gen the market man for his money - the rogues were executed for theft. This case in of pleas of the crown

est & thirty

with stealing by getting the man upon the stone is a theft when the rogue went to stone. Leach C.L.

Another set of cases where they are not delivered to a servant contract or alone - they are cases of Bailment wh is attended with benefit to Bailee - as corn is carried to the pound - no benefit except for the toll. It and

Robbery. Pet. Larceny. Theft to keep the corn when no proof was to be convey he has only a benefit to be derived from it for he is to have his reward. see case in 1 Hawk 130 Rull 95. 43. 1 Rol 73. Moore 246. Popl 84. 1 Sid 254.

Case A. steals from B. & then steals from A. contended this not to be theft for C. took it from A. who had no title & held to be theft & was a stealing from B. prin is the theft was were changed. & Lee A. might be also convicted. were he indicted

Here crime or prem is totally only in yd county where they are committed still it has been held & ofte contend of a thief may be indicted in any county wh he went with the proof. but I dont believe this to be a correct prin. for the thief never defeats the owner of the posses except when a first stole it. But as the crime committed he must be sent to be tried in yd county wher it was committed

2d - There must also be a carrying away - & the least motion is held carrying away (1 Hawk 191.) A slodger was found in a house trying up the steps, & held to be a carrying away for they were moved from the place where they were placed the night before -

Lord if lead a horse out of pasture he had round him about a rodd - A tooth broke from the trunk case & laid on the floor - was on the floor stole - A thief half stewed the wool shead stolen - A bale of goods rained up on yd end with effect was lied

Simple Larceny. It did on the floor - it was
stolen Rul 31 G.

3d. Delivering goods to any person
or by any person - Wife it cited, she cant steal
from her Hus - (Hum).

It is said in the elementary
writers but there is no authority - Not if the Wife
gives the goods of her Hus to a being by him reduced to
person, it is
not to be theft in the man who takes it - but
I take this to be a question - for the Wife has no
prop. in the prop. of her husband - for it was stolen
from a man
fraudulently & the is necessary - But in it is
the case I have no doubt of its being theft

4th It must
be personal goods for real prop. cant be ~~stolen~~
& the Rule was in this Country for the cutting
~~goods~~ trees or grain - or taking fruit off from the
trees & carrying them off it - is no theft but
if the apples were in the heap & he carried them
of it wd be theft & if the trees were cut & he car-
ried them off it is theft even if he cut them himself
& left them for a few days the trees become perp.
& it is a theft. but no particular time is set by
the authority as to the length of time in Hertford
a man cut the water mellons from his vines
to make the persons thieves when they came &
took them the next night

A man cut down
shoes in Oct. or a Board, a Rock & leather arrived
fraudulently. - But why is it not theft when he
gave a Board to B - & C steal it - It is not the

A Note payable to bearer I suppose can be stolen for it may be considered as money.

Simple Larceny } cant claim any benefit from it,
But bank notes & the thieves will be theft. for they
are currency - & there are decisions on this point
but it have been made rendering the theft. but
they were overlaid after these decisions -

But the man was
honest who kept a lie - tho it was false say for
the mail, & the rogues had kept it & then the honest
man - but there is no redemption.

But if a horse
was stolen from A. - by B. - A he needs the A can
recover the, but if A. lend a lill stolenly B. &
B keeps it to C. A cant call a C for the hire
& the reason is a matter of policy for in this case
there will be no currency - but with the cattle
they cant be secreted. but any thing wh keeps the
money is as liable to be stolen (4 Bl 233. 1 Hawk 1 Mod
891 as any thing else 1 Vent 187. Lev 1137. & Co
33.

When the money is kept to a long fide purchaser
it is gone for ever

But creatures of Whim as cats
monkeys - Dogs & A it will be not theft to take
them away tho it will be trover

It is not theft to
take fish from a fishing place - but if they are
taken from a pond it is theft, if the fish were
put into the pond - & one then as much theft
as gold taking of pond

I mean stole his own fish. from
an inland lecture in order to make the lecture

So when one trusts his property to another & the owner takes it to make the trustee liable - it is theft.

Simple Larceny } Stealth it was a theft 1 Hawk 144.
Cro Eliz 596

By ye Cl. G. Lar. was punished with death
with benefit of Clergy - but petit larceny was
not punished with death. - but in ye county the punishment was pillory
whipping & fort - A horse stealing is yet
punished more severely than other theft in law by
Henr Gates, & this severity is in consequence of the fleetness of the horse

Piracy - Every act of robbery
or depredation on sea (if not done by the mariners
of the vessel) which would be called felony or robbery
on land is piracy - if done by the mariners
of ye vessel it is embezzlement (1 Hawk 152) and
not whether done privately (2 Wil 421 4 Bl 71)
or not

1st It must be done without auc. - for if
auc. is given by a country as by letters of marque
&c. it is not piracy - But privateering.

It is a crime punished - (&
it is ye Law of Nations) - by death.

The Trial is
held in the admiralty Ots - for it did not be piracy
if done within the boundaries of a country - as in other
law - in ye country of Europe is tried by the Judges but in
Eng they have a Jury - & so I suppose it is in ye
country, as we borrowed our Law chiefly from
the Eng - & especially the trial by Jury & this is ne-
cessary to us by our Constitutions.

Riots

A Riot is a disturbance of the peace by 3 or more persons assembled & joining of their own heads with the intent mutually to assist each other against any body who shall oppose them in the execution of some enterprise. The enterprise must be of a private nature & to make a riot it must have been actually executed - in a violent manner so as to inspire terror & it is not material whether the enterprise is of a lawful or unlawful nature

If it was done by two it did not be a riot It must be private & not a public rebellion - It must be carried into execution by the party & dictate the force but do not do it - is a riot — Pulling down a nuisance may be one a riot

1st It must be by three

If three persons are indicted - but A & B & C. or if A is acquitted they must all be acquitted unless the jury find there was another found. also if unknown to three

2d They must be collected with the intent of committing a riot. Now if they come with a any diff purpose but afterwards did commit the riot, it is enough 4 Bl 146. 1 Hawk. 2 & 3, 6 Mod 43. Sal 595. L Ray 484. 1 Stra 196.

3d To execute an enterprise of a private nature is cal a private

Riot } individual – for if a gt of further it is treason or something else –

4th It must be executed

if not executed – it is a Rout – ~~& if they do~~ act of to pull down a house & they do it – is a Riot if they fail in it in the attempt it is a Rout – but they do not attempt it is a unlawful assembly

5th Does a violent manner & such a manner to excite terror. Rut is going to the house the tenor of the command & depredation unnamed manner – it will excite terror – but it is only an unlawful assembly if they do not pull down the wall

In going to remove a nuisance in the tumultuous manner – & they destroy it – the manner makes it a Riot 3 Mod 83. 2 Strud 295.

A Rout has all the incidents of a Riot – except the execution.

An unlawful assembly has all the incidents of the Riot except the attempt, for had they attempted & failed it will have been a Rout. 1 Hawk 299.

This may exist when collected ~~without the intent~~ to commit the Riot is when to consult how to commit the Riot Ld 92, 1 Sal 594, 1 Vent 359. 380.

An assembly to defend a mere house, called ~~together~~ by the owner of the house – as he had a right to do. Still this 5 Co 91 – 11 Mod 116 may be an unlawful assembly, ~~but~~ great caution must be used. ——

Riot &c

These offences are of such a nature that any officer of the peace need not wait to apply for a warrant — but has a right to command the peace constables to turn out & suppress the riot but if private persons did make a mistake they do so at their peril 1 Rol 75. Broph 71 — & the offence not only to riots but to quarrels of any kind.

Punishment at CL is imprisonment & fining at discretion. At CL, the fining is chiefly done away by the Stat of Westm 1st.

Battery

A Battery is likewise an offence which is punished with a fine. It is a distinct offence from what is called an assault which is a sudden quarrel — or as the old books say they fall by the ears (4 Bl 145) Now as there are public offences, the trial is a public prosecution.

Now here the party injured is as much a witness as any other person in the public prosecutions

Wiring. If a man had agreed with a man to take an $100 & should give him but $90 it is a civil injury — & cannot be prosecuted as a public prosecution. So when ever the Under State is more than for interest it is not a criminal transaction. Even if he receives more. Can a man made agreement to receive 12 per ct — & then there arose a quarrel & he went to buy him at 12. that he might prosecute — but then their Under declining receiving it — he was pressed to receive it

Usury

The agreem^t is void by receiving more. A he is considered criminal by receiving more.

If the bargain was for no more than lawful interest & he did receive more as interest it wd be criminal but the note is not injured. As the man is subject to the penalty - on the other hand if there was more received, the note wd be void, but lend^r not crim^l.

Case A gives a note to B for $100 at lawful interest & he actually received but $90 the note is lent - for the note is for 100 but he received only 90 - no criminality record. A the usury wd not vitiate it as it is a tort A gave a tort to B for 100 & B let him have it - the note is good - After B says I must have more. A at first gave more the note is good but the receiving the add^l sum renders him liable to the penalty

A Singular question

has arisen it is thus, but lawyers all always differ disagree on it as it is often in many other cases of the kind

A. wants to borrow of B $100. he goes to B & tells him so. B says I must have a premium for lending - B says $5 he must have - A. gives the $5 & then B gives the $100 Question is is the note void? or has the man (B) rendered himself liable? if he has received too much it is void if then too much he is liable; now both there may both be committed - But what is the transact^n has he received too much? No. it is void - But it is precisely the same thing as if he had lent him 95 dollars & taken a note for $100 .. it is not the same act, as if he had had offended

Usury } Suppose B had asked but 5 - it is not void - it is the same thing as if B had lent him 100 & then A gave him five of them -
So here is a deduction of the usurious bond.

Libel as a Crime

Libel as a Crime, I shall ~~[illegible]~~ some observation on it.

Whoever is guilty of a libel he is liable to punishment - it differs from slander as being written & every thing wrote will be slander, if written will be a libel

It is not slander to charge a man of any crime - if it is true, but even lying is not slander in many cases.

Criminal in order to sue at Law for slander, there must have been a charge which is punishable as a crime

But the principles not given a libel - the Principle upon which is, that whatever has a tendency to render a man redundant - or disgrace him - or repeat it and raise a man's passion so as to cause a breach of peace if written it is a Libel

The cause of the diff. is that slander is but the breath of a man mortal & transitory in a moment but a libel will last for ages. - This distinction is of late origin 2 Wils 403

Libel } In a Writ is ~~an~~ a more an
Slander } a libel in Poetry: accusing the man of the itch &c. —

A libel may be effected with signs pictures or representations. A lost or can be used in Slander - but may may be for a libel

The truth may be given in evid. in an acc. of Slander and also in a libel but can it be given in an indict for libel, ? the C.L says no. - And this be ever complained of - but ~~th~~ and not on of fine - ~~the~~ when the public is concerned, the libel will lie, for the libel endangers the peace of Society

Case Liffor a man who is unfortunate as to have a daughter father & he was wd be ~~pass~~ published - and not the son be named in anger as much as if ~~the~~ allegations were false, Now he Deft wd. decline it then. This wd do in ar for damages but when the public peace is concerned it can not be allowed for the peace of society be here disturbed

Chief of the has answer another quest. ~~the~~ libels with respect to the libels of government - the States have made the alowing the truth to be given in evidence - for of the administration ~~their~~ their acts discussed & ridiculed - ~~the~~ is no danger of interrupt the peace — Now this ~~thing~~ must be ~~so~~ regulated reasonably - for we cant that the mouths of the people for it wd come despotism - & the people wd not be enlightened — This is true that no man has a right to print falsehoods - & so wd disgrace government & so wd be d restrained from doing it

Libel 3

Now mere opinions in cases of this kind are not slander or a libel — for maintain a right to differ — & if he discusses the acts of government as impolitic — it is not slander

But there is no excuse to use coarse language when intending the notices; however if the facts are false the libel will be criminal but if true no crime — & here is of case of close bang. let him smart.

In Mississippi

there have they have had in upon private libels & indeed have distroyd the firm — & all the object of the law to preserve the peace & distroyed

The whole

object was with respect to government. & was not intended to reach private libels.

Another set of

libels to wit — Exciting of a immoral nature & the law sometimes stretched to a great length but when there are made libels it does not extend to books of a solid discussion, but merely such as are vicious, or tend to excite a breach of the laws — these are libels; No discussions of religious principles or opinions or of subject are not libels for if you extend it one step further it will raise great confusion, All that is meant is vile books as exciting ill practices —

It must be published — for if a man writes such a book, & alone & locks it up & it is obtained by breaking open the desk. — & then it is not a libel in the mind that it is in of publication

Libel Eng.

Case of a private letter it cause a quarrel - & held to be a libel for it occasion a breach of ye peace

A man read a libel to his family it is no libel - but if he carried it abroad it becomes a void - the prin is bes the man takes pains to spread it?

Champerty

This was once understood subjected every man who purchased debts of any kind as Notes Bonds &c or any other evidences of debts bound for them. It was an offence because it encouraged Law suits - But in process of time it became a matter of great convenience to part with such Notes & Bonds &c. & so it became usual to sell them & this sale began to be supported by Chancery, from whence it has arisen the idea that the law has become obsolete in all cases but the fact is the Law remains the same so far as is necessary for the good of ye pullic. E.g. A man has money & A, B, & C hold Notes agt others Now if he buys up these Notes for the purpose of making money the old law remains good, wh rendered it an offence punishable by fine & imprisonment

But when such Notes come in ye way of trade & are rec'd for the proof of debts the old law is done away

Upon the same prin. is the Law with respect to selling Disputed title to land. There is an antient St the preventing the sale of disputed titles, & both the purchaser & seller

Champ^s } are liable to punishment — Because it is no thing more than purchasing a Lawsuit.

It is the business of ye party out of possession to bring a suit & get possn & then he may sell

This was an offence at C.L. & St Westm. added new penalties wh were inflicted in addn to ye pene inflicted by C.L. This St makes ye deed void hence it has been questioned whether in those States where there is no St making the deed void whether it would be void or not?. The answer to this is that our ancestors brot this St with them at their emigration — it is therefore as binding as ye C.L. Now go to Co. the whole Law. Co Lit 369 Notes.

A Qu. of magnitude arises out of ye. viz. suppose a man sells a Mort. when another is in possn & claiming it wd ye Mortee be guilty for ye sale? This depends upon ye light in wh Mortee are to be considered. If the Mort. is real prop. then he is guilty of ye offence. If per. it is not an offence

The Ct of Cr. in ye State decided that it was not an offence & this I think is correct. Hence it is no offence to sell to ye one in possn for ye settles ye dispute

Upon ye whole the a purchase for ye purpose of speculation is an offence & it is hightened if also done with ye view to resp. otherwise it is no breach of ye law 4 Bl 158. 1 Hawk 545.

Cheating

This is sometimes a mere private injury at other times it is a public offence & it is my object to shew when it is a public offence where one man sells to another prop. wh he knew had defects there is a private injury

Cheating } only for wh an act will lie – all this kind of over-reaching or making good bargains as it is called is no public offence ~~but it~~ is a /

But it is a public offence when the man by some act or conduct imposes upon the man with whom he is dealing & this is indictable Eg. A man goes into a store at N.Y. & gets another to call him Mr Dancing upon the strength of wh. they let him take wh articles upon credit & then the man runs off this is a pub. offence & indictable

Every thing of this kind where a man appears in a diff. style from yt is wh is usually in, by wh he cheats it is a pub. offence.

Where a man cheats by tokens it is the same thing – or by the use of false weights & measures

This is pun. ished by fine imprisonment or pillory according to the nature of the case – & the Ct may make ~~them~~ find sureties for good behaviour or commit ~~them~~ to prison.

Bigamy

This is where a man has two Wives at once & is an offence at C.L. & is punishable by fine & imprisonment or pillory as the case may be

Where a Hus. or Wife is not heard of for seven years at C.L. the Hus or Wife may marry ag^n without guilt –

Forcible Entry.

of Detaining a man's house

Forcible Ent & Det of lands is an indictable offence. If a man attempts to get posn of his house & when a nother is in posn as where the other remains in opn of ye ~~ex~~ pretation of ye lease it is an indictable offe if he does it by force. But if he gets posn by artifice it is no offe because he has a right to be in posn The reason of this distinction is — a consid of policy in order to preserve the peace

The law does not allow a man to take posn of his own himself — when it will lead to a breach of ye peace.

If a man comes to ye house armed & brings a mob with him & threatens to attack ~~them~~ him if he does not give up the house — it is the same as if he actually enters with violence because this serves to inspire terror — ~~But the~~

But there may also be a forcible detainer & if the one in posn detains the house with violence he is also guilty of a pub. offe & is liable to be indicted —

The Mode of proceeding is, ~~that~~ the party complaining calls a Ct. & they enquire into ye circumstances & they go & turn him out who is in posn. But this does not decide ye title. The one so turned out may be fined but whether he may keep in ord I don't know Cro J 199. Co Lit 256. Stra 443. L Ray 1514.

(e) do some act.

No 4.

Obstructing Public Justice

Whenever an officer suffers a man to escape even when agt his will it is an offence but is punished only by a fine.

Every escape by accident is called a negt escape - However it may be agt his will it is an offence & punished by a fine.

But if it is a voluntary escape it may be punished with imprisonment - By the old C.L. when the Pris^r broke prison he was punished by death - but now only by fine & imprisnt.

Rescuing a pris^r from ye officer is an offence for wh formerly ~~in the same~~ the party rescuing was punished in the same manner as ye pris^r wd have been - But now it is fine & imprisonment &c at ye discretion of Ct.

Compounding a felony

is an indictable offence, this is when one agrees not to indict, if ye crim^l will do (c)

A Conspiracy between two or more men to get an innocent man indict^d in order to have him punished - Here if ye man is acquitted the others are liable to be indict^d & by ye C.L. they cd not be jurors or witnesses - Ty goods & chattels were forfeited & lands forfeited for life - Their trees rooted up & land ploughed - Ty themselves imprisoned for life & fed upon bread & water, this was the old Saxon law & then the indignation with wh ty need the offence

Conspire to indict an Innocent Man. In Eng a mod St now makes it punishable with death. if the man was indicted for a crime that was capital. But therefore the punishmt is imprisnt for life

In the country the punishmt I suppose wd be at ye Discretion of the Ct.

Treason.

Much of the Eng. Law we have nothing to do with, in the country.

Levying war against the government, any attempt to change ye Governmt — or an attempt to force upon them new Ministry of the Government — If Arms are taken to effect a reform. as in Geo Gordons Riot. it is treason Arming with force to procure ye repeal of ye Law or if it be done with the view of compelling the making of Law it is the same

There are certain things whatever are diffmt from treason as suppose there is an insurrection where they have none of ye objects above mentioned in view. But where they have some object in view of they own themselves — such as there are nothing more than high handed riots —

There are certain things declared treason by St. wh before ye St were not so — as where in Eng. the old Lords used to collect their vassals & attack each other — the wars in feudal times — Now these were declared treason by St. & were owing to the particular state of the country. — This is of the same

Treason } notice of the quarrels between Student & Sailors - Yale College.

Lending aid to the enemies of the Republic is Treason. If this which the enemy is of a foreign country or of our own who have rebelled - Lending them intelligence - giving them clothing &c. or in fact any thing which enables them to prosecute their warfare is treason.

But when these acts are done third compulsion it is no treason.

In case of revolutions where in fact the supreme magistrate is the usurper - those who obey him are not guilty of treason, King vs Gordon in Doug. 1 Haw 37. Hale 132 to 136. Foster Cr L 211, 19.

Words never constitute treason - there must be some overt act - Cro C 125.

It has been questioned whether writings was treason - but now the Law is that it is not.

There was indeed a violation of the Law in the case of Lidney Foster 198. 1 Hol 118.

All are principals who are concerned in Treason & there are no accessories.

It is laid down in the Dig Books that there must be two witnesses to convict a man of Treason - whereas in other case one witness is suffi - they dont however need two witnesses to one overt act. one witness

Treason } if he can prove an overt act. is suff.
6

It is said
that the Wife may be compelled to be a witness against her Hus in treason — but I see no auth. to sustain this & probably is the dictum of some Lawyer or Judge or of Bench

Homicide

This is an interesting & important subject — & there are no Sts in the U.S. varying the C. L. There are some variations in the punishments with respect to this crime of homicide

Homicide includes manslaughter & murder — or ~~justif~~ excusable & justifiable homicide. There are some cases of homicide wh are not governed by the general principles they are raised from motives of policy

To constitute murder there must be what the Law calls Malice wh is acting from an inexcusable wicked motive & discloses the malus animus — The Latin word malicia explains it better than the Eng word malice,

The circumstances of the case must disclose what Foster call the universal heart — wh is a total disregard of the rights of others, from whom there might be no expectation of gain & did not intend to murder — but it is a character not fit — the law is society — this is the governing principle — varied only by the principles of Policy

(e) and where it was contrary to his wishes & intentions, ~~that~~ death should ensue

Homicide } Manslaughter is of two kind
one voluntary the other involuntary

Voluntary is when
a man under the effect of sudden anger attempts
some great bodily hurt or murder & death ensues
it is not murder for this sudden great & unprovoked
aggravation with all the angry passions in motion
has it is always unfeigned hatred, it does not of
consequence arise from that unsocial disposition
which renders him unfit for life

If the man had time
to cool after provocation it is murder, But if the provocation is
a slight one no matter however sudden, it is
murder this evidence of the unsocial heart.
heat & passion alone is not the cause, but the
suddenness & temperature of the provocation. - this is voluntary
M.S. & does not arise from the design to kill, but
from an intent to do some injury the act, from which it takes its
name.

The only reason it is not murder is that he
had not time to cool - for the law preserves great
to a man wives, but has compassion on his frailties.

2d Involuntary M.S. is when the man
did not intend any such thing (e) it happens in
two cases 1st when he is employed in some un-
lawful business & in doing it ~~com~~ causes the
death of a man — as going into a lot to shoot
a horse & in doing it shoots a man just out
of sight in the woods - Or on a training day when
the people were in a ~~tumult~~ drinking at the law

(e) and here no question is made as to who was in the right ...

Homicide } A one wanth intent to frighten the rains & gun over the head - but one was fired but the gun down at the moment he pulled the trigger & so he shot ~~the~~ a man - the Dr. M.L.

2d The act

Lead of Lord M.L. is when the man was engaged in a lawful business but he did it negligently or not with the care with wh men usually do those in that act - of when a man was throwing boards from the house - wh he had a right to do & there was but little probability of any one passing but he without notice throws them down & kills a man -

The third kind is called excusable ~~Ma L.~~ Homicide, ~~this~~ ~~happens~~, & is some times called excusable Hom de se defendendo as when a man to prevent herself from being injured but is hard pressed & he has done all he could to prevent murder is at last compelled to it

It is not

however always excusable Hom. for it sometimes called justifiable Hom. - tho' there is but a shadow of diff. between them. When are commit or causes death to prevent some crime from being committed; as an attempt to commit a rape & he kill it is justifiable - But ~~there~~ suppose a quarrel to have been commenced - & he is obliged to do all he can to prevent the murder - & if in the avoidance it is excusable. (2)

Agt where the man was in pursuit of a lawful act & killed the

No 5

Homicide } negligence, it was invol. hom. But where in pursuit of a lawful act & no neg. & death ensues it is excus. hom. by misadventure

Now where a man is obliged to take away the life of another by the law of land as a Sheriff hanging a criminal is justifiable hom. so in the preventing the escape of a prisoner but if it is done to gratify a per. revenge - Excus.

Note that in ye case there must be an apparent necessity, so when a sheriff & bound to suppress a riot act, the riot act having been read & all done that can be done - he is justified in taking a life

If in the attempt to take some of the rioters. & the rioters themselves are killed the killing justified

A child

creeps into a bag room unknown to any one & a boatman in pitching off to bag strikes the pistol forth into the child & kills him - what is it? it is not murder - no malice - not M & defence defendendo. for there is no self defence - no justifiable - no acci. by any the law under into effect it is Mrs. S. by misadventure - for he was doing a lawful act not guilty of any negligence,

A man cutting wood. & child runs by him. & the axe flies of the helve - wh was an unusual thing the child is killed, this is excusable hom. by misadventure -

But the axe was ever in the helve - & coming off, it is invol. M.S. for the comes within the deff. as we have.

So in the case of attempt to kill his Lordships sheep &.

Homicide of a Man, this is also Involuntary M.S. within the first part of the Defn.

Now I advise to you that the Eng Law on the head is an entire deviation from all principle, & has been ridiculed by the foreign anc. the Law is that if he is in pursuit of a lawful act it is M.S. but if in pursuit of an unlawful act it is Murder. Now mark there is no difference in the intention, for in the case of the stealing the horse - if a man steal a sheep, the intention will be the same; & they both shd be Involuntary M.S. But I believe there has no case been decided in our Ct by the Eng Law

Now in the case of starting at a footpage of a man is killed what wd it be in this country - there is no malice, no negligence, no defence - it must be excusable homicide by misadventure - Now there are certain games in this country not unlawful - as wrestling this sanctioned by the law - but it is unlawful that they shd get together to throw at cocks, now in these case - 1st of wrestling. the one of the wrestlers is killed. the man is pursuit of lawful act - no defence to - is it not homicide by misadventure - but he wrestles unfairly or contrary to rule. & the man is killed. no malice, no means intent of injury nor he did not do it as he ought to do it - the not the rest - still it wd be involuntary M.S.

Suppose that at cockfight he throws the club & of the head of a man & it was unlawful to throw the club at all, the guess

Homicide } Killing unlawful except in self. M.L.

The intent

Intent is to be collected from all the circumstances
e.g. a man insulted by a large chisel to strike the offender so that he kills him - here was
not intent to kill but there was to create great
bodily harm, there was deliberation - so not M.L.
no sudden provocation therefore not voluntary, but
not in defence of not in execution of laws of
of land - But it is Murder - for we infer
from the weapon of the intended death the malice
aniumus is apparent

Case of a company. He was
insulted - And throws a large stone into the com-
pany & kills one - not aimed at any in particular
- it is adjudged to be Murder - for there was no such
provocation as did justify the act. Here collect
from the fact that such was the nature of his
heart, that it - did not bode so slight an injury
is there the universal heart - 1 Hawk. 124.

A man rolling down
had his chair taken from under him, to prevent
fall he died. it is was held to be involuntary
M.L.

Def. A. with provocative further aimed a
blow at B, A and then killed him, but B step
with a hand spike
out of the way & he struck into the place A was
killed, it was held murder - the universal heart
being displayed

The cases of school-master

A school master whipt a boy for a proper cause

Homicide } with a proper weapon - & in a proper manner but it was followed by death - no malice, Design to kill or do great bodily harm - is here not - & lawful business. & in a lawful manner & no Defence - but was held to constitute here by his adventure

The Boy was playing with two large a whip. & no intent to kill or do great bodily harm. as swung over the head. it was doing a lawful act in an unlawful manner - therefore Involuntary M.S.

The boy was struck over the head with the tongs. it was held Murder - his heart of stone.

This is supposed to be the only way to get at the law on Homicide, Examples must be used, to render it clear. & By this system we shall get at the principles

A man is on a house throwing off boards - & gives warning before the throw this was not heard or attended to - a man was killed, now here was no negligence or design to injure, but it is a casualty harm by misadventure.

Suppose it to have been done without warning tho' intention being in a by place, there was here a degree of carelessness because in all such cases warning should be given, it is involu. M.S.

The Brown people were passing it being in a village & no notice was given, this has been held to be murder - for it displays the unsocial heart. tho' he did not intend to kill, still he wanted care & shew an indiff to & wellfare of men

Homicide

A man was driving a team & cart & a child slips under of wheel. There was no one by. There was no Murder or V&M.S. for he was pursuing lawful business & lawfully. it was M.S by misadventure

He stopt to talk & his team went forward. & before he gets to it again the child is run over, no Murder - or V&M.S. but he did not pursue his lawful business lawfully. therefore involv M.S.

Now he orders the child out of the way but does not regard them further & runs over one of them, it was held to be an accident or of great pain.

Human

turn'd a stuffed Bull into the road & he killed a man held to be murder as it disclosed of unnatural heart

Guils

Are apparently being collected. & person throw a squib into it - & it hit a man in the eye & caused death. even tho there was no intent to kill he indeed there was scarcely a chance of killing. but if business was unlawful it constituted M.S.

The other case was a very large squib whereas the former was a far small one. the was so large & to and larger latent if not life & it caused death. & held to be Murder the business was unlawful

Husband & Wife

A case tried before Judge Porter, A man had been invited to dinner with his wife he knew there was a fine man

Coke lays down this rule on the Maxim that every man ought to know Law, & the Sheriff ought to know whether he had jurisdiction or not.

If a private person execute one who is sentenced to death or if the proper officer do it without proper authority, he is guilty of felony 1 Hawk 106. Co Lit. 12 B.

1 Haw 107. Foster 270. 1 Roll 149 1 Hale 494.

Homicide

his friend's house — he took his gun to shoot game there. he was very fond of his wife — not finding game he drew the charge. but while in the house a 3rd person put some ducks & loaded it again, he did not discharge it — on going home the Hus. to show his wife the excellence of his gun shot it — & killed his wife not knowing it — to be loaded it was contended accidentally & not M. I. not L. in consequence of the carelessness. & if it was not this it was contend'd to be excusable hom. by mis adventure. & was so held. & the judge thinks correctly decided.

L. Coke lays down the law in a case of justifiable hom. as a case in point he says if the Sheriff did execute a man at the order of a Court who had not authority the Sheriff wd be guilty of murder, but says the judge R. that this is too great ignorance, to be supposed, the Ct. wd be guilty of. Now it is not the Law that if a man ignorantly causes the death of a man when there is no malus conscius — & in this case there is a total want of that malice — the most that can be made of it is that there is fault in not being better acquainted with the Law & therefore Lord' M. L. 10 Co 76. 1 Hawk 105. Agn with respect to Just. & Hom. a distinc. to be made — non an officer is obliged to arrest a man & then keep it if in the struggle to keep him he kills him it is justifiable if not done thro malice.

But now he has got away out of reach can he be shot? it is laid down in the Books. that the

Port-276.
1 Wale 479,480.

Homicide 3

is right - if the crime was such that he did be put to death for - but not in cases of ties on the like; Now the law does not proceed on the ground that a man is guilty untill he is found to be innocent, therefore I doubt the propriety of the shooting him.

When people get into a quarrel it is their duty to retreat as far as possible, if in quarrel if a blow is struck with the fist to kill it is M.S. but now the one killing endeavoured to avoid the effect of fatal blow, but was compelled to it - now this is excusable de se defendendo

But a distinction has been made on the ground of the one who kills commenced the assault, But he is guilty of nothing but Homicide de se defendendo, for he found he did, he killed himself if he did not kill his antagonist - there is to be some more criminality, Contra 1 Hawk 108 - 1 B. Kely 5 80

B. assaults A. with intent not to kill, nor B retreats or A pursuing on the least he turns out B killed A - A executed as a murderer for it - appeared this was his intention from evidence introduced

In case of M.S. the quarrel must be a sudden one arise from great provocation but he had time to look at the thing, killed him it - was murder - it is not the singing a cut of the not long the endeavor of unusual heat - when he does in under the effect of passion when it does after time to cool. for the it is apparent revenge was the object of the the

1 Hard 124
Cro C 779
1 Lev 169.
Hob 121
Cro J 295
12 Co 47

Homicide 3 Law gives no quarter

It must arise from some great provocation, but contempt or ridicule &c will not excuse tho' it is a great provocation, but he ought not to be so provoked

Case of Grey.

lence. Now if he takes the life from his anger it will be murder - but he confiscates him & every body will say he served him right. but in consequence of an unfortunate blow death ensued. Now this is not murder but there was nothing but words with no of provocation, for he takes an light weapon - if he had taken a club it would have been murder but here he intended no great bodily hurt.

A Boy in a words was carrying off wood - the owner caught & tied him to his horses tail & the boy was killed - it was evidence of unnatural heart ergo Murder 1 Hawk 126. Cro C 191. Calm 5-45.

The case in Roots very much resembles. It was two Boys got a fighting & the little boy who got whipt went home covered with blood the Father went in pursuit & overtook the Boy at a miles distance & struck him a blow wh killed him, it was held to be M S. Now had not the Father here time to cool? it is true he was in anger. But I presume the case is reported wrong. In one of the Roots in wh the same case is reported it is said he hoot with him with clubs - & this wd cause a great difference another represents him as going with staves &

(c) Excepts.ns 1st If a warrant under the Officers acts gives him no authority, as to arrest J. S. a baronet & he had never been Knighted & warrant is to arrest J. S. Knight. 1 Hawk 130. Cro Car 372. 537. Hale 96. 457. 460. 1 Lev 91. 12 Co 49.

2d When a good warrant is executed in an unlawful manner, as by breaking open a door or window to arrest a man 6 Mod 173. 2 Ray 1028. Palm 52. 5 Co 93. 2 Hale 117. 470. Sal. 79.

And should the Officer in this case kill a man he was attempting to take it will be justifiable homicide 1 Hawk 106.

Homicide. Suppose the case and him on the fact. If in the latter case it and be Involuntary M.S. in the former it would have been Murder. 1 Hawk 125. Cro J 296. 12 Co 87. 1 Vent 159. 2 Ray 1498.

If he killed a man in the act of adultery with his wife - it was held M.S. but if it had if he had waited till he had had time to cool & then killed him it and have been Murder.

(c) There is a set of cases where Policy intervenes, & it is often the case that this is the governing fact & suspends the law. The case is one of an officer let him be killed how it will it will be Murder. Now a man about to be taken, the consequence of wh he knew and he has our death. Here the only object is to disable the officer & he might escape, or it is self preservation still to suffer a man to take the or cure it - and the bad policy for officers must be protected, & in these cases no enquiry is to be held as to the malus animus for it - is in all cases Murder

An order shd of officer to the one man for another & deprive him of his liberty - if this was done by a private individual he might kill him but not so with the officer but if he shd act vexatiously it and alter the case. 1 Hawk 129. Stra 499. Foster 129. 135. 308. 9 Co 66. 68. Cro J 280, 286. 5 Co 68. A gaoler was hanged for taking a prisoner out of one room & putting him in another in wh a man had had the small pox. wh he took & died of it, - The removal was unnecessary. 1 Hawk 119. Stra 856. 884. 2 Ray 1758.

1 Wash 122.
Dulet 86-7
Kelly 12 9. 56.

In some of the states they have made a diff in the species of punishments for Vol & invol: M.S. but there is no such distinction at C.L there is a diff only in degree.

Homicide } In resorting to the principle on wh Duelling is based Murder, we discover some other prin. intervenes besides malice. We find there are many cases when the malicia is predominant but they most often arise from principles of false honor & therefore most of the laws which have been made to make it Murder have failed of their effects But the laws wh have lately been made in some of the states are better than the old, they cut a man perfect as to rising in the world entirely off by compelling him to mean he has not sought a duell & never will, nor be engaged in any manner whatever in any Duell.

The punisht of per Mind is Death for M.S. a deff letter Larc. & Vol. M's in the amount - the pun' is fine Imprisonment & burning in the hand with the letter "M."

In this state they inflict the fine for Larc., for Vol. in addn to the other punisht a forfeiture of goods & chattels

But as to M.S. de se defendendo out of regard to life there was a forfeiture of goods & chattels but it has now become perfectly allowable to remit this two punisht for justifiable homicide

In a indict. for Murder the jury may find not guilty of Murder but guilty of M.S.

In some of the states this will be impossible for one, it has cognisance of Murder & an Atty of M.S.

L Rey 1493
Sha 773.
Kelz 27

Homicide.

There was one case where a person took a child & threw it into the well now there was no circumstance in her favor unless it was deranged & the latter was the judges opinion but in M.S. Hall's ignorance probably by the person went thro the punishment.

I mean is indict^d for Murder & it was proved he killed him. it then is the duty of prisoner to prove M.S. & then if it was not murder 1 Haw 124.

For authorities on this subject see Hum. P.C. on the head. & Bl. & Lewis P.C^n with and there cited, & it is best to read elementary work on the subject & this I think is the best method.

Binding Over

I now give you the law as to binding people over to keep the peace & also for good behaviour which latter is a very diff thing from the former.

Sureties of the peace has been sometimes made part of the punishment, but by the St there is no discretion allowed except as it regards the sum, the compulsion of finding the sureties is part of the judgt

In other cases it is diff there sureties alone are demanded & then the officers of the peace may compel the officers the sureties to be given

It is not necessary that there has been an actual breach of the peace, but for a threat either by gesture sign or of like — the sureties may be demanded by the officer or complainant — the offender to prison

Binding Over } If the offence is not done in the presence of any magistrate, but recd is brot before one, even for a breach that is not cognizable before such Magistrate as for a high handed riot, before a justice of peace the party may be dem and for there is evid of a breach of the peace.

When a private person fears he will be injured or killed he may complain to a Magistrate & if there is suff cause found, surety may be compelled to be demd by recd to the one fearing &c This is a remedy given to Wives agt Hus & Hus agt Wives. as they have no act agt each other & cant thus. It is to be observed that the oath of the parts is part of the evidence

This surety to keep the peace always relates to some danger of the peace being broken

It is sometimes part of the judgt, & here recs must always be found. No there are some cases where it is discretionary, agt if act done in the presence of any officer the surety may be compelled to be found. Was sd before

But the most common cases are those of private persons & here aff. idavit being made the Warrant issues; examination is had, & the surety taken &c.

Binding to keep peace, is as ancient as C L. & for good behaviour depends upon a very ancient st one of Ed 3d

It is here not necess that a trial has been held. Suff persons not of good fame may be bound by surety, that are those persons notoriously bad

10 And it belongs to public.

Binding Over, as keepers of Brothels & indeed any persons who are guilty of acts contra bonos mores. The St. is singularly explicit in says "Those who are night walkers. Those who sleep in ye day & walk in ye night, who. Those people enter into houses in ye night,". The St. proceeds on no trial & conviction but only on their good characters. ~~Those~~ If the sureties are not found the person is committed of course, & he remains there until the coming of ye Lt of Sessions or the Lt who does ye trusing of ye county, & then are returned or discharged as Lt thinks fit — 1 Hawd 251.

The ground of ye commitment must be specially set forth to enable him, the pris., to take benefit of the Habeas corpus if he has been committed for some insufft cause

The Bond is never forfeited if he keeps the peace, & ye justice before whom the business ~~of ye Lt~~ is done must certify ye whole process to ye next Court Lt & it should be taken down at ye time of recommitment. But if he breaks his Bond the county is liable. (2) It may be discharge by the Lt. & if he is put in prison at the instance of an individual if that indeed requests the discharge he is not discharged of course, for the request is void. he is no longer affeared — This is questioned 1 Haw 257.

All the cost must be paid before there is any discharge 1 Hale 128 to 129.

This Bond is forfeited as well by threats to the life as an actual breach - Sureties a challenge to fight, &c 1 Haw 258. Cro C 498-9.

Binding Over. And the Bond recites that not only act proceeding with the person who got him bound over but act all other persons whatsoever. 11 Mod 109. 1 Hawk 256 n

Attachments

This is a proceeding in wh the offender is committed & he is not allowed to give Bond. The one of these causes is improper conduct in ye presence of yd Ct, as evidence loud conversation in the presence of yd Ct or to any of the officers of yd Ct

The Mode of proceeding is for yd Ct to order yd Clerk to draw an order for the officer to bring the offr into Ct to shew reason why he did so - ~~in this case~~ & if he had not a reason he is committed but can be held no longer than during yd session of the Ct. but he may afterwards be prosd for yd contempt. 1 Sal 84.

Other causes are where an order of yd Ct is disobeyd as disobedience to a peremptory mandamus as directed to the clerk to record a deed & he will not do it there an attachment is issued & he is committed until he does record it & there is bt out

Act of act the officers of yd Ct as Attys Jailors & even jurors. or witnesses are liable to the attachment for abuse of office if the Sheriff takes advantage of his office by taking more fees than is lawful he is committed at yd discretion of yd Ct. If a juror refd take a bible, or refuse to take his yd oath, or be unruly, without refusing

But a Bail cant take him on his authority of an Offi
but would always the proof with him But he is Bail &
this is called his bail-piece

Attachments. to be sworn & if sworn refuse to give evid. he is liable

Any neglect of Ct being disobey'd renders the person whose duty is thus to perform neglect & disobey'd liable to a attachment

The mode of proceeding is for affidavits to be made of facts if the Ct are not witnesses of them, then the Ct issues a rule to bring him before the Ct to shew cause why he so misbehaved. He is bound to ans. all such interrogatories under oath as a Ct may put to him, & he shall wear himself clear & Ct proceed no farther with him but discharge him & clear him to be prosecuted for perjury if any are willed under oath of duty 2 Ward 1 & 2 1 Sal 84. 1 Stra 185. 444. 546. 5 Mod 73.

Bail

The Doctrine of Bail as it relates to Crim causes - 2 Haw 140.

Now in most of the cases which have been mentioned the crim may be let out of goal upon giving sureties to appear at Ct - & if he does not appear the Bond is forfeited - & he who gives the surety is call'd his Bail - & when let out of prison he is as much the prisoner of his Bail as he was before of the sheriff - & he may be taken any where when he may be found, for he is considered as belonging to his Bail as much as any piece of property, & when taken up he may be sent him to prison

But if the criminal runs away & the Bail is prosecuted & he pays it up & then the criminal returns he may be prosd. for ye bail is no satisfaction of ye crime, unless he stays so long that ye St of Lim has run.

Bail } Sometimes the Bail is given with the intent he shall run away; Haw Pl 96.

The rule at C.L. was that all offences before committment & excepting homicide were bailable but Hom. never was a bailable offence. But if not committed he might be bailed in Treason but not after committment and 97. 1 Lev 209.

Where a man is convicted of an offence he cannot in any case be bailed for the conviction is of end of the Law & the object of Bail alone is to ensure his attendance at Ct.

But the Law is now altered from the C.L. & the Supreme Court ~~of the State~~ ~~will~~ may Bail in all cases & this discretionary — & this they may do even in cases homicide but this cant be done by Justices of the peace (Hale 98. Lutch 12.) the ~~the~~ Sheriff will not do it (5 Mod 323.) after

But in all other cases except of hom. Justices of peace might Bail — but by St Treason & ~~Hom~~ other & now no more Bail all now than Homicide

Wherever the offence has been confessed they be clear of prisoners, & those who are taken with the stolen with the stolen goods are debarred of Bail Hale 101.

There is an exception to the rule that after conviction there can be no Bail, it is contd certificate of a respectable physician that the confinement will

Except when the thief was taken with the mai
nour or stolen goods.

Row 999
Fol 460

Bail } endanger his life ben may be bail
from time to time 1 Sal 103

But the d. Judge Ct may bail
at any time there must be very good cause or
it will not do it, - they are very careful of the
exercise of d power. A man stabd himself
to procure a release (1 Bulst 85 5 Mod 54.) on his
bail & it appeared he did for d purpose & therefore
the Ct would not grant him the bail.

Indictments & Informations

It is a priuiledge of Ld for every
man who was complained of for any felony, the
must be an indict.t before d grand jury bef
it went to the petit jury

But in many of d States
they have departed from this rule - but I dont
think they have departed from the spirit of the rule
for the reason of the old rule was the greatest
of d punishm.t & therefore they let him go thro
the two trials, . In all cases in this country
where d punishm.t is death. the crime has the
chance of being acquitted by either of the two
juries, Cyclo 99. 1 Ld 414.

There may be grand jury
to 1st trey for all offences & the Eng rule in this respect prevails
in many of d States

If the Statute that a crime when
not a crime before directs the manner of pro
ceeding that manner must be followed Cal 288

Indict.ts & Inform.ns. When the indict.t is for a mere penalty it (Stat 5 & 6. 1 Vent 63) never goes before a G. Jury.

An Information is a proceeding immediately before J.P. without any intervention of the grand jury. ——

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